Dissertation

On

BRIDGING BORDERS: STRENGTHENING INDIA'S CORPORATE CROSS-BORDER INSOLVENCY FRAMEWORK THROUGH GLOBAL INSIGHTS AND JUDICIAL TRENDS

LL.M Dissertation submitted in the partial fulfillment of the requirements for the Degree of Master of Laws at the Sister Nivedita University (SNU), Kolkata

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CERTIFICATE

This is to certify that the Dissertation titled **"Bridging Borders: Strengthening India's Corporate Cross-Border Insolvency Framework Through Global Insights And Judicial Trends"**, has been submitted by **Aritraa Dasgupta**, bearing Enrollment ID No.: 2322215005035, Registration No.: 230050351687 for partial fulfillment of the Degree of Master of Laws (LL.M) from Sister Nivedita University under my guidance. It is her original work and may be placed before the examiners for evaluation.

This research work has not been submitted for the award of any other degree of the University or of any other University.

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DECLARATION BY THE STUDENT

I hereby declare that the work which is being presented in this dissertation entitled "**Bridging Borders: Strengthening India's Corporate Cross-Border Insolvency Framework Through Global Insights and Judicial Trends**" in partial fulfilment of the requirements for the award of the degree of Masters of Law in Business and Corporate Laws under the supervision of Mr. Akash Bhunia, Lecturer, School of Law, Sister Nivedita University.

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PREFACE

India's rapidly evolving economic landscape, driven by globalization, increased foreign investment, and expanding international trade, has made it essential to develop a comprehensive legal framework for addressing corporate cross-border insolvency. As Indian corporations increasingly operate across national borders, the limitations of the current insolvency regime—particularly under Sections 234 and 235 of the Insolvency and Bankruptcy Code (IBC), 2016—have become more pronounced . These provisions, while intended to facilitate cooperation with foreign jurisdictions, remain underdeveloped, primarily due to the absence of bilateral agreements and procedural clarity. Consequently, India lacks a harmonized mechanism for the recognition and enforcement of foreign insolvency proceedings. This gap generates legal uncertainty, undermines creditor confidence, and hampers the effective resolution of multinational insolvency cases. Recognizing this shortcoming, the Ministry of Corporate Affairs (MCA) has proposed a draft framework for cross-border insolvency, inspired by the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI). While this marks a significant step forward, the transition from a fragmented system to a coherent and harmonized regime faces a series of structural, legal, and institutional challenges. These include jurisdictional overlaps, regulatory inconsistencies, procedural complexities, and a lack of institutional readiness to handle the demands of cross-border coordination. Furthermore, the current framework under sections 234 and 235 of IBC, 2016 does not adequately provide for mutual assistance, direct court-to-court communication, or standardized relief mechanisms, which are essential features in modern cross-border insolvency systems. This research undertakes a detailed examination of these legal and institutional impediments, with the aim of identifying effective solutions for strengthening India's corporate cross-border insolvency regime. A key aspect of the study is a comparative analysis with the other BRICS nations—Brazil, Russia, China, and South Africa—all of which have taken meaningful steps toward implementing or adapting the MLCBI. These jurisdictions offer valuable lessons in crafting laws that balance sovereign control with the demands of international cooperation, protect creditor rights, and enable judicial collaboration across borders. In addition to international comparisons, this research also analyzes the role of Indian judicial decisions in shaping the practical contours of cross- border insolvency. Courts in India have often been called upon to interpret provisions of the IBC in complex cross-border contexts, and their rulings offer rich insights into the challenges faced under the current legal structure. These precedents not only highlight the practical difficulties of managing cross- border insolvency within the existing system but also indicate the kinds of procedural and legislative reforms that are urgently required.

ACKNOWLEDGEMENT

I would like to take this opportunity to express my sincere gratitude to everyone who has supported and guided me throughout the preparation of my Dissertation.

First and foremost, I am profoundly grateful to my mentor, Mr. Akash Bhunia, Lecturer, School of Law, Sister Nivedita University, for his invaluable guidance, encouragement, and insightful feedback, which played a crucial role in the successful completion of this Research work. His expertise and dedication have been a constant source of inspiration.

I also extend my heartfelt appreciation to Banhita Bose Ma'am, Head of the Department, School of Law, Sister Nivedita University for her unwavering support and for providing the essential resources and a conducive environment for carrying out this work effectively. My sincere thanks go to Debashree Mukherjee Ma'am, Dean, School of Law, Sister Nivedita University for her leadership and for fostering an academic atmosphere that encourages excellence.

Finally, I would like to express my deep gratitude to my family and friends for their continuous support and encouragement throughout this journey.

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LIST OF ABBREVIATIONS

1. IBC – Insolvency and Bankruptcy Code
2. CPC – Code of Civil Procedure
3. IBBI – Insolvency and Bankruptcy Board of India
4. MLCBI – Model Law on Cross Border Insolvency
5. UNCITRAL – United Nations Commission on International Trade Law
6. NCLT – National Companies Law Tribunal
7. NCLAT – National Companies Law Appellate Tribunal
8. SICA – Sick Industrial Companies Act
9. SARFAESI – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest
10. RBI –Reserve Bank of India
11. NPA – Non Performing Assets
12. COMI – Centre of Main Interests
13. FEMA – Foreign Exchange Management Act
14. MCA – Ministry of Corporate Affairs
15. BLRC – Bankruptcy Law Reforms Committee
16. BIFR – Board of Financial Reconstruction
17. SNRR –Special Non Resident Rupee
18. IFSCs–International Financial Services Centres
19. BCCI – Bank of Credit and Commercial International
20. ILC – Insolvency Law Committee
21. CBIRC – Cross Border Insolvency Rules and Regulations Committee
22. PIRP – Pre-Packaged Insolvency Resolution Process.
23. PIL – Private International Law
24. ECB – External Commercial Borrowings
25. ECL – External Commercial Lendings
26. RBL – Russian Bankruptcy Law
27. RCC – Russian Civil Code
28. UNGA – United Nations General Assembly

29. CBI – Cross Border Insolvency
30. IA – Insolvency Act
31. BAPCPA – Bankruptcy Abuse Prevention and Consumer Protection Act
32. EBL - Enterprise Bankruptcy Law
33. NPCSC - National People's Congress Standing Committee
34. FCC – French Commercial Code
35. DIP - Debtor-In-Possession
36. NCJ – National Council of Justice
37. JIN - Judicial Insolvency Network
38. SC – Supreme Court
39. SCC – Supreme Court Cases
40. HC – High Court
41. RBL – Russian Bankruptcy Law
42. SA – South Africa
43. IA – Insolvency Act
44. US – United States
45. WTO – World Trade Organisation
46. EU – European Union
47. FR – Foreign Representative
48. FP – Foreign Proceeding
49. WB – World bank
50. RO – Registered Office
51. FMP – Foreign Main Proceeding
52. FNMP – Foreign Non-Main Proceeding
53. LLP – Limited Liability Partnership

LIST OF CASES

1. *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd*
2. *Solomons v. Ross*
3. *Galbraith v. Grimshaw*
4. *Export-Import Bank of India & Ors. v. Maneesh Pharmaceuticals Limited*
5. *Y. Narasimha Rao v. Y. Venkata Lakshmi [(1991) 2 SCR 821]*
6. *Harinagar Sugar Mills Ltd. v. M.W. Pradhan [(1996) 3 SCR 948]*
7. *Jaldhi Overseas Pte. Ltd. v. Steer Overseas Private Limited [TP No. 18/CTB/2019]*
8. *Peter Johnson John v. M/s KEC International Limited [Company Appeal (AT) (Ins) No. 188/2019]*
9. *Y. Narasimha Rao v. Y. Venkata Lakshmi*
10. *Maloji Rao Narsingh Rao vs Sankar Saran And Ors*
11. *Super General Company vs. Suresh Thonikkadavu Veedu*
12. *Vodafone v. Union of India*
13. *Gibbs & Sons v. Societe Industrielle Des Metaux*
14. *Pandora Case*
15. *Retail Chain Properties Ltd Case*
16. *Westwalk Projects Ltd case*
17. *Ward v Smit: In re Gurr v Zambia Airways Corp Ltd*
18. *Clegg v Priestley 1985 (3) SA 950 (W) at 954F*
19. *Ex parte BZ Stegmann*
20. *B&T case*
21. *Taizinai Case*
22. *Zhejiang Topoint Photovoltaic Co. Ltd Case*
23. *Jet Airways (India) Limited vs State Bank Of India & Anr on 26 September, 2019*
24. *State Bank Of India vs Videocon Industries Ltd & Ors on 4 July, 2019*
25. *Macquarie Bank Limited vs Shilpi Cable Technologies Ltd on 15 December, 2017*
26. *V. R. Hemantraj vs Stanbic Bank Ghana Ltd on 29 August, 2018*
27. *Bank Of Baroda vs Kotak Mahindra Bank Ltd. on 17 March, 2020*

TABLE OF CONTENTS

Abstract 1

CHAPTER 1: INTRODUCTION AND LEGAL FRAMEWORK **2**

Introduction 2

Literature Review 6

Research Gap Analysis 13

Research Questions 15

Hypothesis 15

Research Objectives 15

Research Methodology 15

Scope of Study 15

Limitations 16

CHAPTER 2: STRUCTURAL AND LEGAL CHALLENGES IN INDIA'S FRAMEWORK **17**

Various Statutory Provisions affecting the Operationalization of an Effective CBI Framework within the country 18

Structural impediments hindering the effective execution of an efficient CBI framework within India 32

Using the UNCITRAL MLCBI as the basis for the New Draft Framework to balance India's national, economic, and legal interests 36

CHAPTER 3: CROSS BORDER INSOLVENCY PRACTICES OF THE BRICS

NATIONS **40**

Russia 40

South Africa 61

China 76

Brazil 88

India 114

Comparison of India's CBI Framework with that of Russia 129

Comparison with that of South Africa 133

Comparison with that of China 135

Comparison with that of Brazil 140

CHAPTER 4: JUDICIAL TRENDS AND IMPLICATIONS **144**

Jet Airways (India) Limited vs State Bank Of India &Anr on 26 September, 2019 144

State Bank Of India vs Videocon Industries Ltd &Ors on 4 July, 2019 145

Macquarie Bank Limited vs Shilpi Cable Technologies Ltd on 15 December, 2017 146

V. R. Hemantraj vs Stanbic Bank Ghana Ltd on 29 August, 2018 147

Bank Of Baroda vs Kotak Mahindra Bank Ltd. on 17 March, 2020 149

Insights from the above cases for the potential adoption of the UNCITRAL Model Law 150

CHAPTER 5: SUGGESTIONS **152**

CHAPTER 6: CONCLUSION **156**

BIBLIOGRAPHY **158**

Abstract:

Bridging Borders: Strengthening India's Corporate Cross-Border Insolvency Framework Through Global Insights and Judicial Trends

India is now engaged in increased trade and business with other countries, as a result of which it is also engaging in problems when companies go bankrupt in more than one country. The law we have now in India for such situations, the IBC, 2016, is not enough for dealing with companies with money-lenders or properties outside India. The two sections, 234 and 235 under the law talk about foreign help but only if the Indian government signs a deal with that country. In real life, this process is practically robust, and takes too long. Because of this, India adopted a Part Z which has its foundation on the UNCITRAL MLCBI. But even this draft is not passed yet, and many issues still need to be looked at. This research tries to understand what is stopping India from making a good and proper cross-border insolvency law. One big issue is that there is no fixed method on how to accept foreign court decisions in India. Creditors from outside the country don't know if their claims will be addressed or not. This also affects how other countries trust doing business with India. Indian judges also find it hard to manage when there are cases happening in two countries at the same time. In cases like Jet Airways or Videocon, it can be seen how complex the system becomes. The research also looks at how other BRICS countries (Brazil, Russia, China, South Africa) are dealing with cross-border insolvency. Some of them have already added UNCITRAL rules in their country laws and are doing better than India in this area. If India gets to adopt the best practices from them and takes the useful ideas, it can improve its own domestic law. This paper therefore looks into the structural and legal issues that hinders a comprehensive cross-border insolvency regime in India. It identifies regulatory reforms needed to balance global best practices with national priorities. It also undertakes a comparative evaluation of insolvency of companies across borders in BRICS nations to identify adaptable measures for India's insolvency regime. The study in addition evaluates key Indian judicial decisions to ascertain the nature of judgment given by courts in handling "cross-border insolvency"(hereinafter CBI) issues under the existing legal structure and derives insight for prospective implementation of the "UNCITRAL Model Law".

Chapter 1: Introduction and Legal Framework

INTRODUCTION:

Definitions:

As per the definition given by Wharton's Law Lexicon, insolvency means the condition in which "a person" does not have enough money to pay off all of his debts. In other words, a person is considered "insolvent" if he or she cannot afford to clear off their obligations with the available assets. [1]Also according to a renowned expert, "cross-border insolvency" is "a situation when an insolvency arises under situations that somehow go beyond the purview of a single legal system. This means that no particular set of municipal insolvency legal provisions can be applied perfectly and exclusively without taking into consideration the concerns brought up by the foreign elements of the case"[2]. We shall be dealing in detail with this concept hereafter.

Significance:

Before delving into the intricacies of globalization, we must know that CBI has a long-standing presence in common law courts. In the case of ***Solomons v. Ross***[3], the ruling was unfavorable for the creditor, who later went to the Netherland's Court for resolution. Similarly, in **Galbraith v. Grimshaw**[4]**,** the court emphasized that English courts must respect the legal proceedings of other nations and avoid interfering with them.[5]

With the advent of globalization, trading of one country with another country or foreign countries have become common. Corporate entities in one country often tend to seek economic assistance from individuals or corporations of foreign countries in order to ease the discharge of their corporate obligations. Thus cross-border trading is no longer limited to big multinational

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[1]Arjya B Majumdar, *THE UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY*-.
[2]Ian F Fletcher, *United Nations Commission on International Trade Law (UNCITRAL): Model Law on Cross-Border Insolvency, May 1997*, *in*INSOLVENCY IN PRIVATE INTERNATIONAL LAW: NATIONAL AND INTERNATIONAL APPROACHES SECOND EDITION 0 (Ian F Fletcher ed., 2005), https://doi.org/10.1093/oso/9780199262502.005.0004 (last visited Mar 21, 2025).
[3]Solomons v Ross: 1764 - swarb.co.uk, https://swarb.co.uk/solomons-v-ross-1764/ (last visited Mar 21, 2025).
[4]Galbraith v. Grimshaw, https://uniset.ca/other/cs5/1910AC508.html (last visited Mar 21, 2025).
[5]Divyanshu Kumar, *CBIREGIME IN INDIA: DRAFT PART-Z VIS-À-VIS THE UNCITRAL MODEL LAW*.

firms due to advancements in commercial technology. Companies have been enticed to expand their operations outside their domestic borders by the expanding economies, arranging their operations across national borders. Businesses now deal with a diverse range of legal systems as a result of the growing globalization of corporate operations. But one of the key problems which quite commonly arise in international transactions is the issue of CBI. Speaking of this, we know that the fundamental essentiality of insolvency is the debtor's eventual incapacity to fulfill their financial obligations. Therefore in issues related to cross-border transactions, a situation may arise where one corporate entity supposedly incorporated in India, borrows economic assistance from one or more foreign individuals or corporate entities (known as the foreign creditors) , residing or having been incorporated in foreign countries, and later on such an indebted corporate entity incorporated in India is unable to pay off or discharge its financial obligations arising from such debt or debts due to insolvency. In such cases since the foreign creditors reside in different jurisdictions paying their debts off might not be easy as Indian laws might not always give equal treatment to foreign creditors. Also it might so happen that although the company which has gone insolvent is incorporated in India, yet it owns assets in various foreign jurisdictions. In such cases, the Indian company might require to liquidate those assets situated in the foreign jurisdictions in order to pay off its debts. But the query that emerges is which municipal or domestic law shall be applied to sell those assets and repay the debts. Indian insolvency laws in such cases will not automatically apply in foreign jurisdictions as each nation has a unique set of rules for dealing with insolvency matters. Also in such cases another question might arise as to what steps are to be taken to guarantee that assets held by a specific debtor with assets overseas won't be the focus of a concurrent case abroad if insolvency procedures have started in India for that debtor. Moreover if the debtor and its assets are the subject of ongoing bankruptcy procedures in multiple jurisdictions, what are the possible solutions to resolve such disputes involving more than one countries.[6] Such a scenario is known as "cross-border insolvency" in which a bankrupt debtor possesses properties in many nations or when one or more than one of the debtor's creditors is not a resident of the country in which the insolvency case was brought. [7] In this era of rapid globalization, the fact that international insolvencies are

[6] McKenzie, D., 1996. International Solutions to International Insolvency: An Insoluble Problem. U. Balt. L. Rev., 26, p.15

[7] Halliday, T.C. and Carruthers, B.G., 2007. The recursivity of law: Global norm making and national lawmaking in the globalization of corporate insolvency regimes. American Journal of Sociology, 112(4), pp.1135-1202.

prevalent and not an uncommon occurrence, has been increasingly evidenced by the preponderance of notable corporate failures in recent years that include many jurisdictions. The recent cases of Jet Airways and Videocon serve as prime illustrations of the many unresolved and ambiguous issues that arise in the lack of a concrete structure for resolving CBI issues of companies in India. Such cases raise innate concerns about dealing with international competitors, relying solely on domestic solutions.Thus a degree of synchronization between the insolvency laws of different nations might be one way to resolve these issues.

UNCITRAL MODEL LAW on CBI and India:

CBI concerns have been taken into consideration by the UNCITRAL in 1997 which proposed The UNCITRAL MLCBI and introduced it to the UNGA. The UNCITRAL MLCBI aims to help countries develop a contemporary, harmonized, and just insolvency regime to address cross-border issues. It emphasizes empowering and promoting collaboration and harmonization between territorial domains instead aiming at the consolidation of separate domestic insolvency frameworks, thus acknowledging the differences between different municipal procedural laws. States can help coordinate and resolve complex cross-border bankruptcy concerns by incorporating the Model Law inside their municipal laws. It's interesting to note that at present it does not mandate that the domestic legislation of the different States that adopt it be unified. Instead, it suggests four components—"access, recognition, relief (help), and cooperation"—to expedite the CBI resolution procedure. [8]

Additionally, a public policy exemption to the Model Law states that a country's courts may reject to take steps covered under the "Model Law" if doing so is "manifestly contrary to the public policy" of that state. Speaking of India the implementation of the IBC, which went into effect on December 15, 2016, significantly changed India's insolvency structure. **This law unifies several insolvency regulations for individuals, partnerships, and corporations. Provisions pertaining to partnerships and individuals, however, have not yet been completely put into effect.** Sections 234 and 235 are the two provisions included in the IBC which help with cross-border bankruptcy disputes. But the complex problems that emerge from such across the border cases are not sufficiently addressed by these regulations. In light of this,

[8] http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model.html

on 16th November 2017, the MCA established an ILC, which presented its first Report in 2018. This report suggested revisions to IBC, 2016, based on the insights gained from its application. The ILC aimed a thorough structure for "cross-border insolvency" purposes, drawing from the UNCITRAL MLCBI, 1997, which could be incorporated into the IBC by adding a distinct section for this purpose. The second ILC Report, which included recommendations to the government for the adoption of the MLCBI and the modifications required for its application in the Indian context, was thus given in October 2018.[9]

The proposed rules to the Code are only applicable in situations when the indebted corporate entity possesses properties located in India. This guarantees that the insolvency procedure is under the jurisdiction of Indian courts. However, foreign creditors are also included in the process. In ***Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd***[10]., the SC upheld their right to start and take part in bankruptcy proceedings in India. The rule that international creditors should have equal access to Indian insolvency processes was upheld by this ruling.[11] The draft regulations also impose a reciprocity requirement on insolvency procedures that start outside India. This implies that only in case the overseas nation has enacted the MLCBI or has been expressly designated as a reciprocating jurisdiction by the Indian government, would India accept foreign insolvency procedures.

"Foreign main proceedings" and "foreign non-main proceedings" are the two categories into which the draft regulations divide foreign insolvency proceedings. One that is started in the nation where the indebted corporate entity has its "COMI" is known as a foreign main proceeding, and the one where the debtor doesn't have his "COMI" is the Foreign Non – Main Proceeding.According to "Article 3.2 of the EC Regulations," the state where the debtor's "COMI" is located typically has the authority to initiate insolvency proceedings. However, another member state is also given the power to start insolvency procedures if the properties of the indebted corporate entity are also located there.

The MLCBI does not provide a definition for COMI. However, the EC Regulation [12] describes it as the location at which the debtor consistently manages their affairs, making it identifiable to

[9]Manasi Lad-Gudhate, *Cross-Border Insolvency*, *Chartered Secretary*, Apr. 2023, at 67, https://www.icsi.edu/media/webmodules/CSJ/April/15ArticleManasiLadGudhate.pdf.

[10] Civil Appeal No.15135 OF 2017

[11] http://www.nishithdesai.com/information/research-andarticles/nda-hotline/nda-hotline-single-view/newsid/4417/html/1.html?no_cache=1

[12] Regulation E.C. No. 1346/2000 of the European Council on Insolvency Proceedings, OJ L 160/1 (2000).

third parties. The Draft Provisions of "Part Z" to IBC, 2016 also offer direction for COMI decision in this respect.[13] The decision of "COMI" is directed by Section 14 of the Draft part.

To facilitate cross-border cooperation, the Draft establishes a legal structure for interaction and synchronization between Indian and foreign courts. In cases where multiple foreign proceedings involve the same corporate debtor, the draft provisions allow for joint hearings and case coordination to prevent conflicting rulings.

Therefore, a systematic framework for identifying and handling international bankruptcy proceedings in India is introduced by the draft regulations on "cross-border insolvency."
They distinguish between the two kinds of proceedings, establish clear relief mechanisms, ensure cooperation between courts, and create rules for concurrent insolvency cases. However, their effectiveness will depend on how reciprocity is implemented, how public policy is interpreted, and whether procedural challenges can be addressed efficiently. While these provisions align India with international standards, their success will hinge on judicial clarity, legislative efficiency, and international cooperation.

Literature Review:

1. **"International Insolvency Law, Bob Wessels: Chapter – III, "UNCITRAL MODEL LAW" ON CBI AND LEGISLATIVE GUIDE ON INSOLVENCY LAW"[14]:**
   The "Model Law" has been designed to guide the various States in guiding and drafting their national insolvency laws in a framework which actively discusses the issues related to various cases in CBI.
2. **"Global Financial Resilience: Assessing Opportunities and Challenges in Cross-Border Insolvency under the Paradigms of Universalism and Territorialism: Dr. Hari Krishna Karri, Nithya Ramachandran, and Dr. P. Siva Reddy"[15]:** In "Global Financial Resilience: Assessing Opportunities and Challenges in Cross-Border

[13] Section 14, Draft Part Z, Insolvency Law Committee Report, available at: http://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport_22102018.pdf
[14]Bob Wessels, International Insolvency Law: Chapter III, UNCITRAL Model Law on Cross-Border Insolvency and Legislative Guide on Insolvency Law (4th ed. 2015).
[15]Dr. Hari Krishna Karri, Nithya Ramachandran & Dr. P. Siva Reddy, *Global Financial Resilience: Assessing Opportunities and Challenges in Cross-Border Insolvency under the Paradigms of Universalism and Territorialism*, 11 Int'l J. Innovative Res. Eng'g& Mgmt. 60 – 64 (2024), https://doi.org/10.55524/ijirem.2024.11.3.9

Insolvency under the Paradigms of Universalism and Territorialism," the authors analyze the intricacies involved in "CBI" as linked to financial globalization. The paper takes into account the two prevailing paradigms: universalism, which means one procedure for insolvency against a debtor throughout countries, and territorialism, where each country may treat the insolvency case individually. The study points out the merits and demerits of both approaches with an in-depth discussion of how universalism is often more efficient and fair than territorialism, which protects sovereignty and creditors' interests. By case studies on Kingfisher Airlines, Essar Steel, Videocon Group, and Jet Airways, the paper highlights that there is an urgent need for a balanced approach which would combine harmonization, cooperation, and flexibility to solve these issues. The conclusion presents a pragmatic solution by blending the elements of both paradigms in order to improve global financial resilience.

3. **"CBI– A Case to Cross the Border Beyond the UNCITRAL Sudhaker Shukla and KokilaJayaram"[16]:**This Article critically analyses the "UNCITRAL MLCBI" and presents cases for alternatives beyond its framework. It discusses the shortcomings of the "Model Law" in terms of non-universal adoption, variance in implementation among jurisdictions, and a lack of transparent mechanisms for financial institutions and multinational enterprises. The authors discuss regional and international level attempts to cope with insolvencies across the borders by evaluating the legal framework of India, and evaluating the alternatives at hand, that include bilateral agreements, judicial cooperation under the CPC , and the protocols of insolvency. The paper as a whole suggests that India must develop a tailored "cross-border insolvency" regime that is suitable for its economic and legal context and draw inspiration from the principles of the Financial Stability Board rather than emulating the "Model Law".
4. **"The Institutional Challenges Of A Cross-Border Insolvency Regime: Priya Misra & Adam Feibelman"[17]**: The article "The Institutional Challenges of a Cross-Border Insolvency Regime" explores India's ongoing efforts to lay the basis for a robust

[16]Sudhaker Shukla &KokilaJayaram, *Cross-Border Insolvency: A Case to Cross the Border Beyond the UNCITRAL*, https://docslib.org/doc/7578904/cross-border-insolvency-a-case-to-cross-the-border-beyond-the-uncitral
[17]PriyaMisra& Adam Feibelman, The Institutional Challenges of a Cross-Border Insolvency Regime, 2 Corp. & Bus. L.J. 329, 330-51 (2021)

framework for "cross-border insolvency" under the IBC, 2016. Analyzing the limitation in Sections 234 and 235 of the IBC that now rely on bilateral ad hoc arrangements, this paper discusses the prospect of introducing with suitable adaptation in India, some form of UNCITRAL MLCBI. To the authors' view, however, any structure for "cross-border insolvency" has to be success-bound upon India's NCLT's institutional capacity. Such courts must acquire professional expertise in across the border insolvency legislations and co-operative attitude consistent with international developments. The challenges that the paper identifies include an inexperienced judiciary and lack of coordination in crossborder matters, jurisprudence on predictable lines and systemic inertia deeply rooted in territorialism. The authors point out that, beyond the mere adoption of legal frameworks, there is a critical need for institutional preparation, judicial training, and infrastructural support to enable effective implementation.

5. **"The Need for Implementing a Cross-Border Insolvency Regime within the Insolvency and Bankruptcy Code, 2016 – Ishita Das"**[18]: The paper highlights the increasing necessity for India to have a legal framework for "cross-border insolvency". It highlights how inadequate the current provisions are at handling the complexity of international insolvencies.The paper is detailed on the issues concerning the significance of the UNCITRAL MLCBI, especially the main cornerstones that cover access, recognition, relief, and cooperation and the potential for adoption in India. Recommendations are also studied with respect to ILC and other expert bodies proposing a stepwise approach of adapting a "Model Law"-inspired framework well-suited for the legal and economic Indian milieu. It also elaborates on challenges such as trying to balance concerns of public policy with the requirements of relief in foreign creditors' interests and need for institutional readiness, including judiciary and regulatory capacities. The paper at the tail end also furnishes recommendations regarding how to tackle these issues - through legislative clarifications and infusing best practices from the world to improvise India's "cross-border insolvency" framework.

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[18]Ishita Das, The Need for Implementing a Cross-Border Insolvency Regime within the Insolvency and Bankruptcy Code, 2016, 45 VIKALPA: The Journal for Decision Makers, 104 – 114 (2020), https://doi.org/10.1177/0256090920946519.

6. **"Overview of India's Insolvency and Bankruptcy Code – Mani Gupta, Aman Choudhary and Saumya Upadhyay"[19] :** This article conducts an analysis of developments in Indian insolvency law since August 2021 with a focus on legislative amendments, judicial interpretations, and regulatory changes. The amendment to the IBC deals generally with some specific matters and some future changes in insolvency law. The article outlines critical judicial pronouncements affecting insolvency resolutions and liquidation processes. It also assesses the effectiveness of the IBC, ongoing challenges, and jurisprudential evolving aspects concerning insolvency resolution in India.
7. **"India's Insolvency Code (IBC 2016): Cross-Border Perspectives – *Mohammed Younus*"[20]**: This paper examines the cross-border insolvency framework under India's IBC 2016, analyzing it in terms of how far it has supported the international norms, such as the UNCITRAL MLCBI. The authors have also discussed problems while implementing "cross-border insolvency", starting from the issues of the selection of a forum, enforcement judgments, and rights of creditors. Ultimately, the conclusion from this study recommends that the system of insolvency in India be strengthened on the cooperation mechanism with a view to enhancing investor confidence and speedy resolution of insolvency.
8. **"India's Journey Towards Cross-Border Insolvency Law Reform – Debaranjan Goswami & Andrew Godwin"[21] :** The paper examines India's attempt to enact a "cross-border insolvency" regime, critically discussing its proposed law in comparison to the UNCITRAL MLCBI. It further identifies areas of divergence, particularly with regard to institutional structures, reciprocity requirements, foreign representative access, and India's history of territorialism in insolvency matters. This paper further goes on to bring case studies where practical challenges of "cross-border insolvency" cases were encountered. Its effectiveness is contingent on India's accepting the modified universality over its own territoriality in CBI arrangements.

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[19]Mani Gupta, AmanChoudhary&SaumyaUpadhyay, *Overview of India's Insolvency and Bankruptcy Code*, **Asia-Pacific Restructuring Review** (2023), available at Global Restructuring Review

[20]Mohammed Younus, *India's Insolvency Code (IBC 2016): Cross-Border Perspectives*, 4(4) Int'l J. Educ., Mod. Mgmt., Applied Sci. & Soc. Sci. 30 (2022), available at ResearchGate

[21]**DebaranjanGoswami& Andrew Godwin, India's Journey Towards Cross-Border Insolvency Law Reform, 19 Asian J. Comp. L. 197 (2024),** DOI: 10.1017/asjcl.2024.12

9. ***"CBI in India* – Sakshi Sethia & Sayantika Halder"[22]:** The paper showcases India's efforts to establish herself in accordance with the best practices all over the world as a result of UNCITRAL MLCBI and the IBC, 2016. It detects major challenges in the form of conflicts of jurisdiction, inconsistencies at the law level, and lack of a uniform global framework. The analysis includes case studies like Jet Airways, Videocon Industries, and Kingfisher Airlines to illustrate practical challenges in coordinating insolvency proceedings across jurisdictions. The article suggests that adopting a standardized approach, strengthening judicial cooperation, and implementing necessary legal reforms will improve Indian"cross-border insolvency" framework and promote international investor confidence.
10. **"Cross Border Insolvency under the Insolvency and Bankruptcy Code, 2016 – Rana Navneet Roy &Satyansh Gupta"[23] :** This article particularly concentrates on the "insolvency framework" under the IBC, 2016 with a reference to the drawbacks of the previous Acts like that of the SICA, 1985, SARFAESI Act and the measures adopted by the RBI to regulate NPAs. The article also points out the issues which were being faced by the "financial and operational creditors" before the enactment of IBC,2016. The article otherwise identifies the potential gaps in IBC with respect to foreign debt recovery and focusses on an in – depth analysis of Sections 234 and 235 of the IBC, 2016, covering together their limitations and also the need for IBC to adopt an insolvency regime in tune with the global framework.
11. **"The Companies Act, 2013"[24] :** This particular Act has been assessed for provisions related to "mergers and acquisitions" of foreign companies which provided an insight into the rescue mechanisms for foreign insolvent companies.
12. **"The Insolvency and Bankruptcy Code, 2016" [25]:** The study of provisions 234 and 235, which address the recognition of corporate "cross-border insolvency" judgments, was made possible by this specific legislation.

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[22]SakshiSethia&SayantikaHalder, *CBIin India* (Mar. 23, 2024), available at https://ssrn.com/abstract=4770575

[23]RanaNavneet Roy &Satyansh Gupta, *CBIUnder the Insolvency and Bankruptcy Code, 2016*, 26 J. Legal, Ethical & Reg. Issues ,1, (2023).

[24]Companies Act, 2013, https://www.mca.gov.in/content/mca/global/en/acts-rules/companies-act/companies-act-2013.html (last visited Mar 23, 2025).

13. **"The Civil Procedure Code"[26]:** The CPC has been helpful in understanding the various provisions like under Section 13 and 44A which provides an insight on how foreign decrees can be enforced.
14. **"Conflict Regulation of Across-the-Border Insolvency – Irina V. Getman- Pavlova"**[27]: This paper mainly discusses Russia's attempt to give birth to a a dedicated legislative structure for dealing with "cross-border insolvency". It explains how Russia's draft law proposes rules for recognizing foreign insolvency proceedings, choosing which law applies, and how Russian courts should handle foreign bankruptcy cases. It gives detailed information on how to determine a corporate debtor's "center of main interests ("COMI")", the powers of foreign representatives, and how coordination amongst Russian and foreign courts can be managed. However, this paper does not cover many of the key concerns raised in the Indian context. It does not address group insolvency, where multiple companies under a single corporate group go bankrupt together—something increasingly relevant in Indian cases like Videocon. Also, the paper does not touch upon India-specific legal hurdles such as FEMA restrictions**,** lack of judicial cooperation frameworks**,** orproceduralgapsunder the IBC, 2016. The Russian perspective in the paper is useful, but it lacks comparative analysis with other BRICS countries and does not reflect the judicial trends or practical complications seen in Indian courts while dealing with "cross-border insolvency". As a result, while the work is rich in theoretical content and helpful to understand Russia's legislative direction, it does not establish or explore the core issues highlighted in this research proposal.
15. **"Cross-Border Insolvency with Reference to the Centre of Main Interest – Archit Bhadani"**[28]: This article mainly talks about how the concept of "Centre of Main Interest"(COMI) works in "cross-border insolvency" and why it is important. It explains how "COMI" is used to figure out which country's court should lead the insolvency case

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[25]IBC – Insolvency and Bankruptcy Code, 2016 (last visited Mar 22, 2025).
[26]Section 13 in The Code of Civil Procedure, 1908, https://indiankanoon.org/doc/84779192/ (last visited Mar 21, 2025).
[27]Getman-Pavlova.Conflict regulation of across-the-border insolvency.pdf, https://www.hse.ru/data/2013/05/15/1299734546/Getman-Pavlova.Conflict%20regulation%20of%20across-the-border%20insolvency.pdf?utm_source=chatgpt.com (last visited Mar 29, 2025).
[28]Cross-Border Insolvency: Understanding Centre Of Main Interest (COMI), https://www.mondaq.com/india/insolvencybankruptcy/1197432/cross-border-insolvency-understanding-centre-of-main-interest-comi (last visited Apr 12, 2025).

when a company has businesses or assets in more than one country. The paper uses the Jet Airways case as a main example, where courts in India and the Netherlands both got involved. The author discusses how the Indian court later agreed to coordinate with the Netherland's court using a "cross-border insolvency protocol," which followed some parts of the UNCITRAL MLCBI. It also explains how Sections 234 and 235 of the IBC are not yet active, and that's why India still doesn't have a solid law for cross-border cases. But even though the paper gives a decent overview of "COMI" and how it worked in Jet Airways, it misses many points that are important to India's actual problems in this area. For example, it doesn't go into practical legal challenges like conflicts with FEMA, or how hard it is for foreign creditors to get their money because of India's strict exchange and property laws. It also doesn't touch the need for group insolvency rules— which is a big gap in India's Draft "Part Z". There's also no comparison with BRICS countries like Russia or South Africa, which are trying more flexible systems. The paper mostly stays on the surface and focuses on COMI without going deeper into the policy, regulatory, and procedural gaps that still make cross-border insolvency in India so complicated. So while it's useful for understanding COMI, it doesn't fully explore the bigger changes India needs to make in its insolvency framework.

16. **"Cross-Border Insolvency Regime in India: An Overview and Study Under "UNCITRAL "Model Law"" – Pinky Dhar & Bhupali Saikia"**[29]: This article gives a detailed explanation of how India is trying to deal with "cross-border insolvency". It talks about the basic ideas of cross-border insolvency, what UNCITRAL MLCBI, and how it can help India. The paper supports the idea that India should adopt the UNCITRAL MLCBI through Draft "Part Z". It also includes the Jet Airways case to show how Indian courts tried to handle a situation where insolvency cases were going on in two countries at the same time. The paper mostly supports the draft model and says it will bring good changes like helping foreign creditors, making India more business-friendly, and improving cooperation between courts of different countries. But even though the paper gives a decent overview, it still misses some important points which are very relevant today. It doesn't talk about group insolvency at all, which is a growing issue now as many companies operate under a group structure. The paper also doesn't look into how

[29]Pinky Dhar & Bhupali Saikia, *INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH*, 4 (2024).

laws like FEMA or property regulations create real problems when Indian companies have to send money or assets abroad under court orders. These issues are very common in real-life cases but not discussed here. Also, it talks a lot about what the "Model Law" is and less about how difficult it will be to actually apply it in Indian conditions where courts are over-burdened, and international cooperation is still weak. There's no real comparison with how other BRICS countries have handled similar reforms, which would have given more clarity. So while the paper gives a clear introduction to the UNCITRAL framework and how Draft "Part Z" fits into India's plan, it does not go deep into the tougher legal and procedural challenges that your research proposal tries to highlight.

Research Gap Analysis: This literature on "cross-border insolvency" is an in-depth series of key areas, mulling over the meaning and implications of the UNCITRAL MLCBI as digested by a range of authors. It also gives insight into the different issues that are dominating India's current insolvency regime, as observed by scholars in recent works, besides providing informative international data that add richness to the subject matter. All the same, despite all this research, there is a critical lacuna in terms of bringing structural, legal, judicial, and comparative analyses into one grand framework that is specially designed to address the requirements of India. Although there are many studies that have touched upon the application of the Model Law in Indian contexts, there still remains a lacuna of detailed and full examination of how India can best implement the provisions of the Model Law without, at the same time, abandoning international best practices for its own domestic economic interests.

Statement of the Problem:

India's evolving economic landscape is undergoing a radical transformation, necessitating the formulation of a comprehensive "corporate cross-border insolvency" regime. Such a regime must be in inclusive of the best practices observed across the globe. Lately, a draft framework for "**cross border insolvency**" proceedings based on the MLCBI, under the IBC has been published by the MCA. However, there are several structural and legal barriers that stand in the way of the seamless integration of these much-needed changes in the existing insolvency regime. The most critical issue at hand is the absence of a harmonized system that facilitates the acknowledgement and execution of foreign insolvency proceedings. Such a lack of a

standardized mechanism creates serious uncertainties, which ultimately erode creditor confidence and obstruct the effective resolution of multinational insolvencies.

In addition, the regulatory complexities that dominate, along with jurisdictional conflicts and a serious lack of institutional capacity, pose serious obstacles to achieving effective coordination across borders in insolvency matters. Comparing India's approach with that of other nations in the BRICS block, one can observe the extent of harmonization. By adopting successful legislative and procedural approaches followed by these countries, India can strengthen its own framework. In fact, some of the BRICS countries have adopted different levels of the UNCITRAL MLCBI, which provides invaluable lessons for India. These lessons can assist in striking an optimal balance between creditor rights, judicial cooperation, and overall economic policy objectives.

Observing and adopting the best practices of the jurisdictions of other BRICS nations can prove to be of great assistance to India in the formulation of a framework that not only holds its own at the international level but is also practicable domestically. Further, Indian judicial decisions help to further elucidate the complexities involved in the handling of such cases under the existing legal regime. Further, judicial precedents provide valuable insights into the likely challenges ahead, further underscoring the imperative for legal reforms that are designed at improving predictability, procedural effectiveness, and mutual assistance in cross-border corporate insolvency cases.

This research endeavours to critically examine the different legal and institutional impediments to the effectiveness of India's “corporate cross-border insolvency” regime. For this purpose, it shall consider in depth the viability and probable benefits of importing best practices of the BRICS nations into the regime. The research also intends to examine emerging judicial trends to determine the working implications. Through structured discussion of these key issues, the research intends to contribute positively towards accomplishing a rational, effective, and resilient corporate “cross-border insolvency” regime in the country.

Research Questions:

1. What structural and legal obstacles stand in the way of India developing a more holistic corporate "cross-border insolvency" regime?
2. What are the best corporate "cross-border insolvency" practices of the other BRICS countries that India can adopt to have a strong, harmonized, and effective framework to address the common challenges, and align itself with international best practices?
3. How do Indian judicial decisions reflect the impediments of handling corporate "cross-border insolvency" within the current legal structure, and what insights can they give in relation to effective enaction of the UNCITRAL MLCBI ?

Hypothesis: India's corporate "cross-border insolvency" framework can be strengthened by addressing structural and legal challenges, adopting best practices from BRICS nations, and analyzing judicial insights that facilitate the potential enactment of the "UNCITRAL Model Law".

Research Objectives:

1. To identify the structural and legal obstacles that stand in the way of India developing a more holistic corporate "cross-border insolvency" regime.
2. To examine the corporate "cross-border insolvency" practices of BRICS nations and propose measures India can adopt to develop a robust and harmonized insolvency framework.
3. To evaluate and analyze various Indian judicial decisions that reflect the impediments of handling corporate "cross-border insolvency" under the existing legal framework, and to identify the insights provided by them on the potential enaction of the UNCITRAL MLCBI.

Research Methodology: The methodology applied is purely doctrinal.

Scope of Study:

This study looks into the structural and legal issues that hinder the growth of a comprehensive corporate "cross-border insolvency" regime in India. It identifies regulatory reforms needed to

balance global best practices with national priorities. It also undertakes a comparison amongst Corporate "cross-border insolvency" practices in BRICS nations to identify adaptable measures for India's insolvency regime. The study in addition evaluates key Indian judicial decisions to ascertain the nature of judgment given by courts in handling "cross-border insolvency" issues under the existing framework and derives insight for prospective enactment of the "UNCITRAL Model Law".

Limitations:

The research is limited to a doctrinal study due to time constraints.

Chapter 2: Structural and Legal Challenges in India's Framework

A Brief Idea of the Past and the Present Needs:

The regulatory structure for handling financial distress in India was traditionally disjointed, with different statutes overseeing various aspects. The existence of multiple laws caused jurisdictional disputes, procedural lags, and uncertainty, forcing creditors to pursue multiple legal routes for recovering dues.

This fragmented legal landscape resulted in procedural inefficiencies, drawn-out litigation, and substantial loss in asset value. Before the introduction of the IBC in 2016, both businesses and creditors had to navigate a maze of outdated and overlapping regulations, making debt resolution a tedious and prolonged affair. The absence of an inclusive insolvency structure gave way to extended financial instability for enterprises, ambiguity for creditors, and a decline in investor trust in the country's economic environment.

To address these shortcomings, in 2014, the Ministry of Finance formed the "Bankruptcy Law Reforms Committee (BLRC)" to advocate for an extensive overhaul of insolvency regulations. The committee's report comprised two sections: the first focused on the rationale, framework, and proposals, while the second presented a detailed draft of the Insolvency and Bankruptcy Bill applicable to all corporate entities.

The Indian government thereafter implemented the IBC to consolidate insolvency laws under a single framework and introduce a well-structured, time-sensitive resolution mechanism. The primary goals of this reform included optimizing asset recovery, improving credit flow, fostering financial responsibility, and encouraging entrepreneurship by ensuring timely case resolution.

The IBC has carried out a major role in improving debt recovery for creditors while promoting financial discipline among borrowers. It has also enhanced predictability and transparency in insolvency proceedings, thereby attracting both domestic and global investors. However, despite its achievements, challenges persist, including interpretational uncertainties, delays in adjudication, industry-specific complications, and the lack of a well-defined approach to "cross-border insolvency". The current insolvency statutes are ambiguous and disjointed, resulting in

uncertainty and setbacks in resolving cases. Furthermore, the institutional framework necessary for facilitating business turnaround efforts remains underdeveloped, with an insufficient number of expert agencies and trained professionals. This shortfall hampers efficiency in handling insolvency matters, delaying essential restructuring efforts and worsening economic hardships for both enterprises and lenders.

In India, the execution of strategies for reviving struggling businesses also encounters other obstacles, including intricate legal requirements, procedural roadblocks, difficulties in creditor coordination, inefficiencies in operations, and varying judicial interpretations. When dealing with insolvency that extends beyond national borders, additional complications arise, such as conflicts over jurisdiction, acknowledgment of foreign legal actions, retrieval of assets, barriers in communication, and differences in cultural practices, making international collaboration and regulatory alignment essential. Addressing these concerns within India and tackling transnational insolvency cases present considerable difficulties, which needs to be addressed immediately.[30]

Various Statutory Provisions affecting the Operationalization of an Effective CBI Framework within the country:

Other than the IBC of 2016, some of the various other laws and their corresponding statutory provisions that present procedural and legal difficulties in implementing an effective "CBI" regime within India is required to be analyzed in order to amend and improve the Corporate "CBI" framework within India.

1. **The "Code of Civil Procedure" (hereinafter "CPC") – Section 13:** The CPC, 1908"establishes a framework for acknowledging and enforcing decisions rendered by courts outside India. Such rulings are typically regarded as definitive, barring a few exceptions outlined in this section[31] of the CPC. A judgment delivered by a foreign court shall be deemed final regarding any issue directly decided between the same individuals or those claiming through them under the same legal title, except in the following situations:

[30]Siddharth Sivaselvam, *ASSESSING AND UNRAVELLING THE CHALLENGES FACED IN THE PREVAILING CORPORATE INSOLVENCY RESOLUTION PROCESS IN INDIA*.
[31]Section 13 in The Code of Civil Procedure, 1908, *supra* note 26.

a) When a court with inadequate jurisdiction renders the decision.
b) When it isn't founded on the case's substantive merits.
c) If the proceedings record demonstrates a dependence on a misconstrued understanding of international law or a rejection of Indian law when it applies.
d) When natural justice principles are broken by the legal procedure that resulted in the decision.
e) If dishonest methods were used to obtain the decision.
f) When it supports a claim that deviates from any Indian legislation already in effect

Thus according to the above section a judgement given by a foreign court shall be recognized within India only if it does not violate the above conditions. Especially the conditions under clauses "c" and "f" under which a foreign judgement shall not be recognized by an Indian Court if it violates any of the applicable Indian Laws or defends a claim which contravenes any law within India.

Clauses "c" and "f" under Section 13[32] of CPC although serve in safeguarding and protecting the autonomy of Indian courts with respect to the implementation of foreign judgements , yet, in the focus of foreign judgements involving "cross border insolvency" issues , there exists certain complexities under which this very autonomy results in creating inefficiencies and inconsistencies within the Indian "CBI" resolution mechanism. This can be analyzed from some of the following cases:

In ***Export-Import Bank of India &Ors. v. Maneesh Pharmaceuticals Limited***[33], it was finally held that under Section 22 of SICA, which parallels Section 14 of IBC, no legal action for enforcing security interests against a financially distressed company can proceed unless approval is obtained from BIFR or the appellate authority. In this case, no such approval was secured, making the foreign decree unenforceable under Indian law and falling within the restrictions of Section 13 of CPC.

[32] *Id.*
[33] gen_pdf.pdf, https://nclt.gov.in/gen_pdf.php?filepath=%2FEfile_Document%2Fncltdoc%2Fcasedoc%2F2709138038782019%2F04%2FOrder-Challenge%2F04_order-Challange_004_172907129210941640266 70f88bc1ebf5.pdf&utm_source=chatgpt.com (last visited Mar 21, 2025).

It can therefore be analyzed that the decree was granted in contravention to Indian legal provisions, making it inapplicable under Section 13 of the CPC and thereby unenforceable. Hence due to the legal complexities under Section 13 the rights of the creditors coudn't be protected in the given case.

In the case of ***Y. Narasimha Rao v. Y. Venkata Lakshmi [(1991) 2 SCR 821]***[34], the SC of India ruled that a foreign judgment based on a jurisdiction that is not acknowledged by Indian law cannot be deemed conclusive. Such a judgment falls within the scope of Section 13(c) [35]of the Civil Procedure Code and is therefore not legally binding in India.

In ***Harinagar Sugar Mills Ltd. v. M.W. Pradhan [(1996) 3 SCR 948]***[36], the court observed that a winding-up petition serves as a means of equitable execution. By analogy, a petition under Section 7 can also be regarded as a form of equitable execution. However, an Indian court has the authority to refuse its enforcement if it determines that the petition contravenes any of the provisions outlined in clauses (a) to (f) of Section 13 of the CPC.

In ***Jaldhi Overseas Pte. Ltd. v. Steer Overseas Private Limited [TP No. 18/CTB/2019]***[37], a coordinate bench of the NCLT ruled that a petition relying on a foreign award cannot be entertained unless it adheres to the relevant legal provisions.

In ***Peter Johnson John v. M/s KEC International Limited [Company Appeal (AT) (Ins) No. 188/2019]***[38], the Operational Creditor argued that a foreign decree merely served as evidence supporting the debt claim and, therefore, did not require compliance with Sections 13 and 44 of the CPC. However, the NCLAT dismissed this argument, ruling that the decree must fulfill the conditions set forth under Section 13 of the CPC.

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[34]Case Study: Y. Narasimha Rao and Ors v. Y. Venkata Lakshmi and Ors, LEGAL WIRES - WORLD LEADERS IN LEGAL EDUCATION AND RESEARCH (2024), https://legal-wires.com/case-study/case-study-y-narasimha-rao-and-ors-v-y-venkata-lakshmi-and-ors/ (last visited Mar 22, 2025).
[35]Section 13 in The Code of Civil Procedure, 1908, *supra* note 26.
[36]Harinagar Sugar Mills Ltd vs M. W. Pradhan on 21 March, 1966, https://indiankanoon.org/doc/266150/ (last visited Mar 22, 2025).
[37]Jaldhi Overseas Pte. Ltd vs Steer Overseas Private Limited on 28 February, 2022, https://indiankanoon.org/doc/64596372/ (last visited Mar 22, 2025).
[38]Peter Johnson John vs Kec International Ltd on 3 July, 2019, https://indiankanoon.org/doc/174558541/ (last visited Mar 22, 2025).

Thus it can be rightly said that, ultimately, these challenges weaken investor confidence and negatively impact global business and investment in India.

2. **CPC – Section 44A [39] and 47 [40]:**

Under Section 44A a certified copy of a judgement of a superior court in a "reciprocating territory" can be enforced in India like a judgement of a District Court and from the time such a certified copy is submitted Section 47 shall be applied to the execution procedures of judgements in the District Court under this section. Under this section the Central Government may designate a territory as a "reciprocating territory" by giving a notice in the Official Gazatte. However, when it comes to insolvency cases, this provision has its limitations, as not all foreign insolvency rulings can be directly executed under this section. Section 47 of the CPC talks about the questions or issues that the Court executing a decree is empowered to determine.

A key restriction of Section 44A is that it applies only to monetary decrees and does not cover orders related to taxes, fines, penalties, or arbitration awards. In insolvency proceedings, courts often issue directives such as moratoriums on creditor claims, orders for liquidation, or restructuring plans for debt repayment. Although some of these reliefs like moratoriums etc. are covered under the Draft "Part Z", but still they cannot be used to provide relief as they are yet to come in force. Thus these types of decisions which do not always meet the legal definition of a "decree" under Section 44A, makes them ineligible for direct enforcement in India, in turn violating the interests of foreign creditors with respect to such claims.For example, if a foreign insolvency court appoints a liquidator and orders the confiscation of a debtor's properties located in India, an Indian court may decline to enforce it under Section 44A if the conditions under section 44A are not fulfilled. Similarly, if a foreign court grants a stay on legal actions against a debtor, Indian courts may only recognize and enforce it if the ruling aligns with the conditions outlined in Section 13 of the CPC, which lists exceptions for enforcing foreign judgments. Another important factor is the principle of reciprocity. Section 44A only

[39]Section 44A in The Code of Civil Procedure, 1908, https://indiankanoon.org/doc/51234069/ (last visited Mar 22, 2025).

[40]Section 47. Questions to be determined by the court executing decree, LATESTLAWS.COM, https://latestlaws.com/section/334/2571/section-47-questions-to-be-determined-by-the-court-executing-decree/ (last visited Mar 22, 2025).

applies if the foreign country granting the judgment also recognizes and enforces Indian court decisions in a similar way. Similar language is suggested in Clause 1(4) of Draft "Part Z", which specifies that international actions will only be accepted if the foreign nation has ratified the "Model Law" or if the Central Government has expressly designated the nation as a reciprocating territory by a notice. If this is not the case, the foreign judgment may not be eligible for execution in India.

In ***Maloji Rao Narsingh Rao vs Sankar Saran And Ors.***[41]it was held by the HC of Allahabad that since "Madhya Bharat" was not a Reciprocating Territory under Explanation I of Section 44A, hence the Gwalior court which had passed the impugned decree cannot be considered a foreign court under Section 44A since it was located in Madhya Bharat which was not considered a Reciprocating Territory under Section 44A. Thus the decree of Gwalior Court could not be enforced.Further in the case of ***Super General Company vs. Suresh ThonikkadavuVeedu***[42] it was also held that without satisfying the requirements delineated under Section 44A [43] of CPC, no foreign judgement or decree can be enforced within India.

3. **Foreign Exchange Management Act, 1999 – Section 3**[44]: Section 3 of FEMA 1999 is a vital provision governing foreign exchange transactions within India. Under this particular section, there is a limitation to foreign exchange transactions and financial activities for individuals and businesses unless they are approved by the RBI. According to this particular section, no person can deal in foreign exchange unless they are falling under the category of authorized persons under Section 2, clause "c" and Section 10 of the Act. This very section also prohibits making payments to persons resident outside India under any condition without RBI's approval. The provision also places restrictions

[41]Maloji Rao Narsingh Rao vs Sankar Saran And Ors. on 11 April, 1955, https://indiankanoon.org/doc/1287648/ (last visited Mar 22, 2025).
[42]Super General Company v. Suresh Thonikkadavu Veedu, Kerala High Court, Judgment, Law, casemine.com, HTTPS://WWW.CASEMINE.COM, https://www.casemine.com/judgement/in/58cc1c0653bee77c606b806a (last visited Mar 22, 2025).
[43]Editoral Team, *Section 44A CPC: Enforcing Foreign Judgments in India | LawCrust*, LAWCRUST GLOBAL CONSULTING COMPANY (2025), https://lawcrust.com/section-44a-cpc-india/ (last visited Mar 22, 2025).
[44]Foreign Exchange Management Act, 1999, AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO FOREIGN EXCHANGE WITH THE OBJECTIVE OF FACILITATING EXTERNAL TRADE AND PAYMENTS AND FOR PROMOTING THE ORDERLY DEVELOPMENT AND MAINTENANCE OF FOREIGN EXCHANGE MARKET IN INDIA. (1999), http://indiacode.nic.in/handle/123456789/1988 (last visited Mar 23, 2025).

on financial transactions in India that are linked to buying or transferring assets abroad. In simple terms, if someone is involved in acquiring or creating an asset outside India, they are not allowed to carry out related financial activities within India. Now since cross-border insolvency involves transferring funds and assets between countries, these restrictions create several challenges as foreign creditors may struggle to claim or recover assets from Indian insolvency cases, or Indian companies undergoing bankruptcy may face difficulties in repaying debts owed to international creditors. Also in CBI issues , even if, Indian corporate debtors intend to transfer assets to foreign creditors for discharging off their debts , this very section creates restrictions in such transactions by imposing regulatory scrutiny of RBI. Also under the decree of a foreign court if an Indian corporate debtor is required to transfer assets to a foreign company or creditor in execution of the decree for discharging the debt coupled with resolution of the CBI issue.

4. **Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000**[45] - These Regulations, established under FEMA, 1999, set guidelines for capital account transactions involving both Indian residents and foreign entities. These regulations divide such transactions into two categories: Schedule I, which applies to Indian residents and includes activities like investing in overseas securities, borrowing in foreign currency, transferring property abroad, issuing guarantees for foreign residents, and trading in foreign currency. Schedule II deals with non-residents and governs investments in Indian securities, real estate purchases in India, providing financial guarantees, currency exchange, and transferring capital assets abroad. Each of these activities must comply with specific limits and conditions imposed by the RBI to regulate capital movement and ensure adherence to foreign exchange laws. Certain transactions are strictly prohibited unless expressly approved by the RBI or allowed under FEMA. Similarly, under Regulation 4(b) foreign investors are restricted from putting money into certain sectors like chit funds, Nidhi companies, agriculture, and real estate businesses. Also under Regulation 5, any foreign investments in India must be conducted through authorized banking channels to ensure compliance with regulatory requirements. Moreover, individuals engaging in capital account transactions are required to provide

[45] showfile.pdf, https://upload.indiacode.nic.in/showfile?actid=AC_CEN_2_45_00004_199942_1517807323986&type=rule&filename=FEM%20(CAT)%20Rules.pdf (last visited Mar 23, 2025).

necessary declarations to the RBI, ensuring financial transparency and preventing unregulated cross-border capital movement. Thus although these regulations play a crucial role in safeguarding India's economic stability and maintaining control over foreign exchange transactions, yet they create potential impediments in cross – border transactions involved in CBI matters as these regulations not only hinder investments by foreign investors yet they also imposes restrictions by Indian residents in dealing with foreign exchange transactions which play a crucial role in resolving CBI issues. It is notable that in recent times some amendments have been adopted by the Indian Government to ease cross – border transactions. In such an effort to encourage the use of the Indian Rupee (INR) in cross-border transactions, the RBI modified the following rules on January 14, 2025:

1) "Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015 (FCA Regulations) through the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Fifth Amendment) Regulations, 2025 (FCA Amendment)"; [46] and
2) "Foreign Exchange Management (Deposit) Regulations, 2016 (Deposit Regulations) through the Foreign Exchange Management (Deposit) (Fifth Amendment) Regulations, 2025 (Deposit Amendment)"[47].

These changes focus on deposit regulations and foreign currency accounts, aiming to make it easier for businesses and individuals engaged in international trade, investment, and CBI cases to manage their financial operations without unnecessary hurdles. One of the biggest updates in the deposit regulations is that authorized banks in India and their foreign branches can now open SNRR accounts. This move will allow for better handling of capital and current account transactions, making it easier for foreign creditors and investors involved in CBI proceedings to transfer funds. In addition, units operating in IFSCs can now maintain SNRR accounts with Indian banks, making financial integration between India and the global market more seamless than before. These amendments align

[46]FEMA Norms Amended to Facilitate Cross-Border Transactions, FOX MANDAL, https://www.foxmandal.in/News/fema-norms-amended-to-facilitate-cross-border-transactions/ (last visited Mar 23, 2025).
[47]*Id.*

with the RBI's ongoing efforts to internationalize the Indian rupee, building on its decision in June 2024 to permit foreign residents to open rupee accounts outside India. [48] The impact of these reforms will be particularly noticeable in cross- border insolvency cases, as they offer increased liquidity, easier access to foreign capital, and more stability in currency exchange. By simplifying the regulations around foreign currency deposits and refining existing policies, the RBI aims to provide better financial support to businesses, creditors, and insolvency professionals navigating complex international financial transactions. As of now, these regulatory changes have only been announced and are not yet in effect. Their implementation will depend on further notifications and approvals from the RBI, ensuring that all necessary regulatory mechanisms are in place before they officially come into force. Altogether speedier implementation of these Amendments will ease cross – border transactions in future, thus helping in more efficient resolution of CBI matters[49].

5. **Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015 [50] :** This regulation, promulgated by the RBI, establish guidelines on how Indian residents can acquire and transfer property abroad. These regulations, which replace earlier rules from May 3, 2000, ensure that such transactions comply with India's foreign exchange policies. Under Regulation 5 indian residents are generally prohibited from purchasing or transferring property abroad unless they obtain general or special permission from the RBI, except under certain exemptions. Although these rules help maintain regulatory oversight while allowing legitimate foreign property transactions, yet they hinder effective resolution of CBI issues involving transfer of assets by Indian companies abroad. In CBI resolution mechanisms it is a common requirement for Indian Companies to transfer assets to foreign creditors for easy

[48]Blog | RBI Liberalizes FEMA Rules for cross-border trade settlements, @RICAGO, https://www.ricago.com/blog/paving-the-way-for-rupee-internationalization-liberalization-of-fema-regulations (last visited Mar 23, 2025).
[49]FEMA Norms Amended to Facilitate Cross-Border Transactions, *supra* note 46.
[50]Reserve Bank of India - Notifications, https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10257 (last visited Mar 23, 2025).

discharge of the debt – obligations during which such Regulations might create a hindrance in the same.

6. **Foreign Exchange Management (Borrowing and Lending) Regulations, 2018[51]:**This regulation, introduced by the RBI , set the rules for how money can be borrowed and lent between Indian residents and individuals or entities outside the country. These regulations replaced older guidelines and established clear conditions for such financial transactions. They cover various aspects, including ECBs, ECL, trade credits, rupee borrowings, and specific restrictions on certain financial activities. To ensure that cross- border borrowing and lending align with India's financial policies, the regulations impose limits and conditions on such transactions. For example, under Regulation 3, if an Indian resident wants to borrow from a foreign source, they must comply with RBI's prescribed limits.[52]Similarly, lending money to foreign entities is allowed only under specific conditions, such as approved sectors and permitted purposes. The rules also emphasize proper reporting, security measures, and penalties for any violations. Additionally, Indian companies with business operations abroad can lend money under certain conditions, and individuals can borrow for personal use within set limits. Thus although these regulations are designed to maintain financial stability, regulate capital flow, and protect India's foreign exchange reserves, they restrict the borrowing and lending of money between Indian entities and foreign corporate entities which poses a significant challenge in cross border resolution mechanisms especially in situations when an Indian corporate entity undergoing insolvency proceedings has creditors or money lenders of foreign corporate entities abroad. In such circumstances repayment to the creditors abroad will definitely require RBI approval which further might introduce procedural complexities thus delaying the resolution mechanism altogether.
7. **FEMA External Commercial Borrowings Regulations [53]:** The External Commercial Borrowings (ECB) Regulations under FEMA affect how companies in India deal with bankruptcy when they have borrowed money from foreign lenders. If an Indian company

[51]Reserve Bank of India - Notifications, https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11441 (last visited Mar 23, 2025).
[52]CS Swapnill Sharma, *RBI Revises ECB Framework - Aligns with FEMA (Borrowing and Lending) Regulations, 2018*.
[53]FEMA-ECB-Regulations.pdf, https://www.sbsandco.com/images/documents/FEMA-ECB-Regulations.pdf (last visited Mar 23, 2025).

takes a loan from a foreign bank or investor and later faces financial trouble, these rules decide how the money can be repaid and how foreign creditors can get back what they are owed. While these regulations help control foreign borrowing and protect India's economy, they also make it harder to solve bankruptcy cases that involve companies with business in different countries. One big problem is that foreign lenders cannot easily recover their money when an Indian company goes bankrupt. Since every repayment must follow RBI's rules and needs approval in some cases, it can take a long time for foreign creditors to get their dues. If the company owns property or has money outside India, FEMA rules can stop it from selling those assets freely or bringing the money back to India. This makes it difficult to handle bankruptcy cases where different countries are involved. Also, since ECB rules allow borrowed money to be used only for specific purposes, making changes to financial plans in a bankruptcy case can be slow and complicated. Because of these challenges, foreign investors might think twice before lending money to Indian companies, which can affect India's ability to attract global business.

8. **Foreign Exchange Management Act, 1999 – Section 6 [54]:** The rules in this provision control how people and businesses in India can handle financial transactions involving foreign exchange, especially for investments and loans that cross international borders. Normally, anyone can buy or sell foreign exchange through an authorized dealer for these transactions. However, the RBI, along with the Central Government, owns the power to decide which types of transactions are allowed, how much foreign exchange can be used, and under what conditions. There is one important exception—RBI cannot stop companies from using foreign exchange to repay loans or cover the depreciation of direct investments if these payments are part of their normal business operations. But when it comes to CBI cases, these rules create some serious hurdles. If an Indian company that has taken loans from foreign lenders goes bankrupt, it cannot simply repay those debts freely. Any repayment must follow RBI's conditions, and approvals may be required, leading to delays. Even if the company owns assets or has money outside India, strict rules may prevent it from selling those assets or bringing the money back to India without

[54]63-the-foreign-exchange-management-act-199917092020075653.pdf, https://ifsca.gov.in/Document/Legal/63-the-foreign-exchange-management-act-199917092020075653.pdf (last visited Mar 23, 2025).

meeting certain conditions. This makes the insolvency resolution process slow and complicated. Additionally, if foreign creditors want to recover their money by acquiring Indian assets, they may face restrictions on property transactions, further delaying the resolution. All these barriers make cross-border insolvency cases difficult to resolve quickly, discouraging foreign investors and lenders from doing business with Indian companies. As a result, India's insolvency process becomes less efficient, and foreign confidence in the system may weaken.

9. **Regulation 4 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018** [55]: These regulations were primarily created to regulate how non-resident Indians, overseas citizens of India, and foreign nationals can buy, sell, or transfer property in India. However, these rules also impact corporate entities, particularly those undergoing insolvency, even though a company is not a citizen. The law treats companies as legal entities as per the Explanation to Regulation 9 of this Regulation, which states that under this given Regulation "citizens" would include corporate identities as well. This means that both Indian and foreign businesses must comply with FEMA regulations when dealing with property in India. This becomes especially significant in cases of insolvency, where a struggling company's assets, including real estate, may need to be sold to repay creditors. If the company is foreign, selling or transferring its Indian properties is not straightforward, as strict FEMA guidelines apply. Indian courts may handle the insolvency proceedings, but foreign creditors or resolution professionals cannot automatically take over or repatriate funds abroad without RBI approval. This FEMA Regulation allows foreign companies to own property in India only if they have an established business presence, such as a branch or project office, but liaison offices are not allowed to hold property. This restriction complicates matters when a foreign company that owns property in India becomes insolvent, as it can delay asset liquidation and creditor repayments. The situation is even more complex for companies from restricted countries like Nepal, Hong Kong, Iran, Sri Lanka, North Korea, Bhutan, Pakistan, Macau, China, Bangladesh, Afghanistan, as they must get prior RBI approval before transferring any property. Another major hurdle is the

[55]Reserve Bank of India - Foreign Exchange Management Act Notification, https://www.rbi.org.in/SCRIPTS/BS_FemaNotifications.aspx?Id=11248 (last visited Mar 23, 2025).

restriction on repatriating the proceeds from property sales. If a foreign company in insolvency sells property in India, it cannot simply send the money abroad without RBI approval, making it difficult for foreign creditors to recover their dues. Even when an Indian company with foreign creditors is liquidated, FEMA's rules on repatriation must be followed, which can slow down the entire insolvency process.[56] Thus although these regulations were originally meant to oversee individual property ownership, they now play a major role in insolvency cases involving companies, making it harder for struggling businesses to deal with their real estate assets. By enforcing strict rules on property transfers and repatriation, FEMA ensures that foreign companies and creditors cannot bypass Indian regulations, making it a crucial factor in cross-border corporate insolvency.

10. **IBC, 2016: Section 14 -** Section 14 of the IBC, is a crucial provision that protects companies undergoing insolvency by imposing a moratorium. This moratorium essentially freezes all legal actions, prevents asset transfers, and stops enforcement proceedings against the corporate debtor once insolvency proceedings begin. While this safeguard is highly effective within India, it becomes a major obstacle when dealing with cross-border insolvencies, as its reach is strictly limited to Indian jurisdiction. One of the biggest challenges is that the moratorium applies only in India, meaning courts and authorities in other countries are not legally bound to follow it. As a result, foreign creditors can continue suing the insolvent company, enforce judgments, or seize its assets abroad, even though such actions would not be allowed in India. This lack of global enforcement weakens the entire purpose of the moratorium, as the corporate debtor remains vulnerable to foreign legal claims. Another major issue is the protection of assets. The moratorium ensures that assets within India cannot be sold, transferred, or encumbered. However, this protection does not extend beyond Indian borders. If an Indian company owns factories, office spaces, or other properties in places like Singapore or Dubai, foreign creditors can still claim or liquidate these assets. This creates an unfair situation where some creditors—those operating under Indian jurisdiction—must wait for the resolution process, while others—those in foreign jurisdictions—can freely take legal

[56]CBCL, *The Interface Between IBC and Foreign Investment Instruments*, NLIU CBCL (Jul. 16, 2020), https://cbcl.nliu.ac.in/insolvency-law/the-interface-between-ibc-and-foreign-investment-instruments/ (last visited Mar 23, 2025).

action to recover their money. It disrupts the balance of insolvency proceedings and leads to unequal treatment of creditors. The moratorium also creates uncertainty for foreign creditors. While it shields the debtor from lawsuits in India, it also means that foreign creditors are restricted from claiming their dues through legal means. Since there is no clear alternative for them to participate in the Indian insolvency process, they may hesitate to lend to Indian businesses in the future.[57] This legal uncertainty discourages international investments and financial transactions with Indian businesses. Complicating matters further, India does not automatically recognize foreign insolvency proceedings. If an Indian company is declared insolvent in another country, Indian courts are not obligated to respect the foreign moratorium. This can lead to a messy situation where different countries handle the same company's insolvency in conflicting ways. This creates parallel insolvency cases with no proper coordination, leading to legal confusion and inefficiencies. Another practical issue arises with business operations. Under Indian law, essential suppliers—such as electricity providers or internet service companies— cannot stop their services to the debtor during the moratorium. However, this rule does not apply to foreign suppliers. If an Indian company relies on critical services from an overseas vendor, that vendor can choose to discontinue services, severely impacting the company's ability to function. The timeline of the moratorium also adds another layer of complexity. Section 14 states that the moratorium remains in effect until the resolution process is completed or liquidation is ordered. However, different countries have different timelines for their insolvency procedures. If an Indian company's resolution process takes nearly a year while a related insolvency proceeding in the U.S. concludes within six months, coordinating the two cases becomes a challenge. This mismatch can create delays, misaligned creditor settlements, and difficulties in restructuring businesses with international assets. To solve these problems, India needs a more structured legal framework for handling CBI matters. Adopting the UNCITRAL MLCBI would help Indian courts acknowledge and executeinternational bankruptcy proceedings and vice versa. It would ensure that moratoriums imposed in India are respected internationally, allow for better coordination between courts in different countries, and protect overseas

[57]The Need for Implementing a Cross-Border Insolvency Regime within the Insolvency and Bankruptcy Code, 2016 - Ishita Das, 2020, https://journals.sagepub.com/doi/full/10.1177/0256090920946519 (last visited Mar 23, 2025).

assets from being unfairly seized during an insolvency process. The Indian government has proposed introducing "Part Z" in IBC, which would create a formal structure for dealing with CBI issues, making it more convenient for courts and creditors to work together across different legal systems.

11. **CA, 2013 [58]: Sections 232 and 234 –** Sections 232 and 234 of the CA, 2013[59], outline the legal process for mergers and amalgamations, including those involving foreign companies. Section 232 primarily deals with domestic mergers, detailing how companies can transfer their assets, liabilities, and ongoing legal matters to another company with approval from shareholders, creditors, and regulatory authorities like NCLT. This provision ensures that a financially struggling company can be absorbed by a stronger entity as part of the resolution process, preventing liquidation and maximizing creditor recovery. While this process is structured to ensure transparency and compliance, it becomes complicated in CBI cases, where foreign creditors and courts may not recognize or align with Indian legal requirements. Section 234 allows Indian companies to merge with foreign entities, but only if Central Government specifically notifies about such country. Additionally, such mergers require approval from the RBI, which adds another layer of regulatory scrutiny. This can make cross- border insolvency resolutions slow and cumbersome, as approvals may not always align with the urgency of financial distress cases. If a distressed Indian company seeks to merge with a foreign entity as part of an insolvency resolution plan, delays in approvals may lead to asset deterioration, loss of business value, and complications in negotiating with foreign stakeholders. Another challenge is that consideration for these mergers can be paid in cash or depository receipts, which may not be ideal for foreign creditors who seek direct asset recoveries. While these provisions are designed to facilitate corporate restructuring, they often create procedural roadblocks when a company undergoing insolvency has international stakeholders.

The successful implementation of a CBI Mechanism in India is thus severely hampered by legal and regulatory barriers in the Indian legislative framework, as may be deduced from the considerations above. In order for India and other nations to fairly judge and administer CBI

[58]Companies Act, 2013, https://www.mca.gov.in/content/mca/global/en/acts-rules/companies-act/companies-act-2013.html (last visited Mar 23, 2025).
[59]*Id.*

disputes without compromising the rights and interests of international business organizations and creditors, such obstacles must be promptly addressed.

Structural impediments hindering the effective execution of an efficient CBI framework within India:

The successful execution of India's CBI Mechanism is hampered by a number of structural issues in addition to the legal ones previously mentioned. By "structural hurdles," we mean institutional issues that prevent the CBI procedure from being implemented effectively inside India's administrative and regulatory framework. The following is a discussion of a few of these:

1. **Absence of a Resilient CBI Regime within India:** India currently lacks a complete corporate CBI framework because the "MLCBI" has not yet taken effect, notwithstanding the proposal to add Draft "Part Z" to the IBC 2016 that is based on the provisions of the aforementioned Model Law. For example, managing international creditors and their assets is a common problem that was demonstrated by the insolvency operations of companies such as Byju's. For this reason, India needs a clear and precise legal framework for CBI.
2. **Discrepancy between the Draft and the CPC provisions** - The CPC's current rules and the planned structure under "Part Z" clash in a number of ways, especially when it comes to the acceptance and enforcement of foreign decisions in India. One significant problem is Section 13 CPC, which limits the acceptance of foreign rulings in cases where the foreign court lacks jurisdiction, the ruling violates Indian law or public policy, or the decision was obtained fraudulently or without following the proper procedures. Clause 15 requires recognition if the foreign proceeding and representation match the required definitions and procedural standards, but Clause 4 of "Part Z" creates a public policy exemption that permits the NCLT to reject foreign decisions that are obviously against Indian public policy.However, the draft does not explicitly clarify whether recognition under "Part Z"takes precedence over Section 13 CPC, leaving uncertainty over whether foreign insolvency orders could still be rejected under CPC despite being acknowledged under "Part Z". Another concern arises with Section 44A CPC, which permits the direct execution of foreign judgments only from reciprocating territories. For non-reciprocating jurisdictions like the USA or China, a fresh lawsuit is required in India before such

judgments can be enforced. Through Clause 1(4), which restricts recognition to nations that have ratified the UNCITRAL MLCBI, and Clause 1(5), which permits the Central Government to create bilateral agreements for enforcement, "Part Z" aims to remedy this. Nevertheless, it remains unclear whether judgments from non-reciprocating territories will still necessitate independent legal proceedings in India. Additionally, there is no direct indication of whether "Part Z" overrides or merely coexists with Section 44A CPC, further complicating the process for foreign creditors.

3. **Procedural Irregularities between "Part Z" and CPC** – Procedural barriers continue to be a significant concern for foreign lenders attempting to exert their claims on Indian companies. The existing legal framework often results in delays, high costs, and unpredictability due to judicial scrutiny under the CPC. Past cases illustrate how Indian courts have insisted on compliance with CPC requirements before recognizing foreign decrees or arbitration awards. Although "Part Z" attempts to address this by granting foreign creditors equal rights as domestic creditors under Clause 10(1) and excluding foreign tax and social security claims under Clause 10(2), it does not provide an exemption from CPC procedural hurdles. As a result, foreign creditors may still have to initiate separate legal proceedings in India, prolonging the enforcement process. Another major unresolved issue relates to reciprocity and enforcement agreements. The lack of automatic reciprocity creates challenges for Indian creditors seeking to enforce judgments in foreign jurisdictions. "Part Z" attempts to mitigate this by allowing the government to enter into reciprocal enforcement agreements under Clause 1(5) and empowering it to modify the list of recognized countries under Clause 1(6). However, foreign judgments do not receive automatic recognition unless a bilateral agreement is in place or if such a foreign territory has not adopted the MLCBI. This means that foreign creditors of the countries not falling under this requirement may still have to pursue separate litigation in Indian courts, increasing the legal complexities and reducing the efficiency of "cross- border insolvency" recognition.
4. **Inconsistencies within the Current framework under IBC, 2016** [60]: Although Sections 234 under IBC provide for bilateral agreements , but negotiating individual agreements

[60] 547c9c2af074c90ac5919fa8a5c60bd4.pdf, https://ibbi.gov.in/uploads/legalframwork/547c9c2af074c90ac5919fa8a5c60bd4.pdf (last visited Mar 23, 2025).

with multiple countries is often a slow and complicated process, requiring compromises in other legal or trade matters. Moreover, the absence of a universal framework for such agreements can lead to inconsistencies, making cross-border insolvency procedures uncertain and unpredictable [61].

5. **Potential Issues in Creditor Rights of Foreign Creditors [62]:** India has recently seen the insolvency proceedings of several major corporations, such as Essar Steel and Videocon Industries. These cases bring up an important question: how should a company's assets located in other countries be treated during insolvency? This issue becomes even more complicated depending on the nature of these assets. A company may have operations in a foreign country through branches, or offices. It may also own physical assets abroad. In cases where a company operates through subsidiaries, each subsidiary is considered a legally separate entity. This means that even if the parent company undergoes insolvency, its foreign subsidiaries are not automatically affected. This principle was reaffirmed in the ***Vodafone v. Union of India***[63] case. However, when it comes to shares held by an Indian company in a foreign subsidiary, legal rules dictate that those shares are considered to be situated at the registered office of the subsidiary. Before the enactment of the IBC, under the Companies Act, 1956, the liquidation of an Indian company did not automatically include its foreign assets. If the company had assets in the UK, the English courts would first have to recognize the Indian winding-up order before deciding whether to hand over those assets to the foreign liquidator. Furthermore, creditors based in the UK could file independent claims against the company's assets in the UK. This approach is followed in both India and the UK. Similarly, if a UK company had assets and conducted business in India, it would be classified as an unregistered company under Indian law. If the company then underwent insolvency proceedings in the UK, separate winding-up proceedings would still be required in India under Indian law. The company's assets in

[61]Debaranjan Goswami & Andrew Godwin, *India's Journey towards Cross-Border Insolvency Law Reform*, 19 ASIAN JOURNAL OF COMPARATIVE LAW 197 (2024), https://www.cambridge.org/core/journals/asian-journal-of-comparative-law/article/indias-journey-towards-crossborder-insolvency-law-reform/358135F0BED9AA9375F21913BAB56A73?utm_source=chatgpt.com (last visited Mar 21, 2025).

[62]Bar & Bench, *Foreign Creditors and Insolvency Proceedings in India*, BAR AND BENCH - INDIAN LEGAL NEWS (2018), https://www.barandbench.com/columns/foreign-creditors-insolvency-proceedings-india (last visited Mar 23, 2025).

[63]Vodafone International Holdings B.V vs Union Of India & Anr on 20 January, 2012, https://indiankanoon.org/doc/115852355/ (last visited Mar 23, 2025).

India would then be distributed according to Indian insolvency laws. A well-known example of this is the case of the BCCI [64], which was liquidated in Luxembourg, the Cayman Islands, and the UK. Despite these proceedings, the Reserve Bank of India initiated separate proceedings to handle BCCI's assets in India. When it comes to enforcement, the situation becomes even more complex. Since India does not have reciprocal agreements under the UK Insolvency Act, 1986, or the UNCITRAL MLCBI, courts in England are not obligated to recognize Indian insolvency proceedings. As a result, foreign creditors with contracts governed by English law can still take independent legal action against the debtor's assets in the UK. This principle was firmly established in the landmark case of ***Gibbs & Sons v. SocieteIndustrielle Des Metaux***[65]. In this case, an English company that had a contract with a French company attempted to recover debts after the French company entered insolvency proceedings. The English court ruled that a company's insolvency in one country does not necessarily release it from contractual obligations under another country's legal system. This means that even if an insolvency resolution plan is approved in India, foreign creditors may still have the right to enforce their claims in other jurisdictions, provided that the debtor has assets in those countries. However, if the debtor does not have assets outside India, the creditor would be required to seek enforcement through Indian courts, which may not recognize such claims under the CPC, 1908.

Legal experts, including Professor Ian Fletcher, have pointed out the shortcomings of the Gibbs ruling. He argues that when a foreign creditor chooses to participate in an insolvency process, they should be considered bound by its outcome. According to him, a creditor should not be allowed to benefit from an insolvency proceeding while simultaneously attempting to enforce their claims separately in another country. This situation highlights a major weakness in India's insolvency framework. Despite repeated recommendations for reform, India still lacks a clear legal structure for handling cross- border insolvency cases. The need for such a framework was first emphasized by the Justice Eradi Committee in 2000, which recommended that India adopt the UNCITRAL

[64]Bank of Credit and Commerce International, WIKIPEDIA (2025), https://en.wikipedia.org/w/index.php?title=Bank_of_Credit_and_Commerce_International&oldid=1281768760 (last visited Mar 23, 2025).

[65]English Court of Appeal upholds The Gibbs Rule, https://www.jonesday.com/en/insights/2019/02/english-court-of-appeal-upholds-the-gibbs-rule (last visited Mar 23, 2025).

Model Law, either fully or in a modified form. However, these recommendations were largely ignored. Later, the NL Mitra Committee, which examined bankruptcy laws, also called for the introduction of a structured cross-border insolvency system. At present although the Draft "Part Z" to IBC, 2016 has been proposed by the Indian Government based on the UNCITRAL MLCBI, it is yet to be implemented.

6. **Issues in enforcing Foreign Insolvency Decrees [66] -** As stated previously, right now, India does not have a clear legal system for handling insolvency cases that involve assets or creditors from other countries. No such agreements under Section 234 of IBC have been formed as of yet. The CPC, only applies to money-related judgments and does not cover insolvency rulings. This creates complications for foreign creditors who want to claim assets in India who can only have relief if their country has been officially recognized by the Indian government as a reciprocating territory. As previously mentioned, the ILC has put up a new Draft "Part Z", which is based on the "UNCITRAL MLCBI", 1997, to resolve this issue. If this law is enacted, it will create a structured system for recognizing foreign insolvency proceedings. However, since this law has not yet been enacted, foreign creditors currently face legal uncertainty and difficulties when trying to recover their debts in India.

Thus together with legal challenges such structural challenges also requires potential attention so that altogether India's CBI Regime can be well established and framed to address all the potential challenges that have come through all these years.

Using the UNCITRAL MLCBI as the basis for the New Draft Framework to balance India's national, economic, and legal interests:

As can be seen above, India now confronts a variety of legal and procedural obstacles that make it difficult to establish a prospective CBI regime within the country. These legal and structural complications result from India's current failure to establish a standardized system for handling CBI issues in accordance with the UNCITRAL MLCBI's rules. In light of this, on 16th November 2017, the MCA established an ILC, which presented its initial Report in March 2018. In this report the Committee recommended India to adopt the UNCITRAL MLCBI as part of the

[66]Rajendra Barot, Suharsh Sinha & Anusha Jegadeesh, *How to Obtain Recognition of a Foreign Insolvency Process and How to Enforce Insolvency Related Judgments (India)*.

IBC. To ensure that it suited India's legal and economic landscape, the committee carefully examined each clause of the MLCBI and suggested necessary adjustments. Based on these suggestions, the ILC proposed a set of provisions specifically addressing "cross-border insolvency", which came to be known as "Draft "Part Z"." In January 2020, the MCA established the CBIRC to develop detailed rules and regulations for implementing Draft "Part Z". After conducting its review, the CBIRC submitted its report to the government in June 2020, providing recommendations on the subordinate legislation required for incorporating CBI laws within IBC.[67] Only when the corporate debtor has assets in India are the proposed regulations under the Draft Provisions to the Code relevant. This ensures that Indian courts have authority over the insolvency process. But the procedure also involves creditors in foreign jurisdictions .

We shall now discuss some of the basic strengths and weaknesses of the Draft Portion in order to analyze its effect on India's national, economic and legal framework.

1. **Applicability of the Draft [68]** – It is noteworthy that the proposed chapter focuses strictly on corporate borrowers and does not mention individual debtors or personal insolvency. Because of this, the government might prefer to first assess how the new chapter affects corporate borrowers before deciding whether or not to include individual debtors in its scope. This cautious approach seems to be a practical and rational decision, although the central government has officially issued a notification extending the application of Part III of the IBC to personal guarantors of corporate debtors. This means that individuals who have provided personal guarantees for corporate loans will now also be covered under the Code's insolvency provisions.
2. **Reciprocity** – Only those nations that have already incorporated the UNCITRAL MLCBI into their legal framework and those that have bilaterally agreed with India for the reciprocal application of the Model Law are anticipated to gain from this Draft, according to the concept of reciprocity as applicable under the New Draft Framework. This is a possible problem for countries that have not ratified the Model Law or signed

[67]Manasi Lad-Gudhate, *Cross-Border Insolvency*, *Chartered Secretary*, Apr. 2023, at 67, https://www.icsi.edu/media/webmodules/CSJ/April/15ArticleManasiLadGudhate.pdf.
[68]Saloni Khaitan, *RECOGNITION OF CROSS-BORDER INSOLVENCY CASES IN INDIA: ANALYSIS OF THE PROPOSED DRAFT TEXT*.

any bilateral agreements with India about how to deal with CBI issues. Therefore, the universality of its provisions is limited by this reciprocity condition.[69]

3. **Definition of Corporate Debtor under the Draft** – The way the draft defines a corporate debtor has become a topic of debate. While the IBC under sections 3(7) and 3(8) provides a specific definition, the draft suggests expanding it to include foreign companies in Clause 1(2). The IBC does not, however, define "foreign company" specifically; instead, it must be read in light of other legislation, such as the Companies Act. The challenge here is that the MCA has not clarified whether foreign companies also include unregistered companies. This lack of clarity could lead to confusion and overlapping legal proceedings.

The effect that these provisions can have on India's national, economic and legal framework, now can be summarized as follows:

1. From a national point of view, the draft focuses only on corporate borrowers, leaving out individual debtors and personal insolvency. This cautious approach allows the government to first test the new framework's effectiveness on companies before deciding whether or not to expand its scope. It also ensures that any challenges that arise can be addressed before applying the law to individuals. At the same time, the government has already taken a step toward including personal guarantors of corporate loans under insolvency provisions, thus widening its purview of application, showing a gradual expansion of the IBC's reach.
2. From the point of view of Economic Benefits, we can say that, the draft introduces the principle of reciprocity, meaning that only nations that have either adopted the UNCITRAL MLCBIor have signed bilateral agreements with India will benefit from this framework. While this initiative encourages other nations to align with global bankruptcy standards, it also limits the reach of India's CBI regime. This could create uncertainty for companies from countries that do not meet these criteria, potentially impacting foreign investments. At the same time, the draft strengthens investor

[69]getdocument.pdf, https://www.mca.gov.in/bin/dms/getdocument?mds=x1IxpYyaOG99lx4MU4GSAw%253D%253D&type=open (last visited Mar 25, 2025).

confidence by ensuring a clear and predictable insolvency process, which can make India a more attractive destination for businesses. However, excluding sectors like NBFCs and utility service providers raises concerns about how insolvency cases in these industries will be handled, especially when their importance to India's financial and infrastructure stability is profound.

3. Draft "Part Z" has brought a major transformation to India's insolvency legislation framework. One of the biggest changes is the official recognition of foreign insolvency proceedings, where cases will be classified as either "Foreign main proceedings" or "foreign non-main proceedings." This classification will help Indian courts decide the level of cooperation and relief they can provide in such cases, making the resolution process smoother. However, the draft's focus on reciprocity— meaning it will only apply to countries that have either adopted the "Model Law" or have a bilateral agreement with India—raises concerns. This could create difficulties in resolving cases that involve countries without such agreements, making CBI more complicated in those situations. Another key aspect of the draft is that it applies only to corporate debtors, leaving out individuals and certain financial institutions like NBFCs. While this approach allows the government to test the new framework before expanding it further, it might require future changes to cover a wider range of insolvency cases. Additionally, the draft proposes assigning specific benches of the NCLT to handle CBI cases, which could lead to more efficient and specialized decision-making. However, this also means India will need to invest in proper training and resources to equip these benches with the expertise needed to handle complex international cases. Altogether, the Draft "Part Z" is a progressive step toward bringing India's insolvency legislations in line with international standards, but its success will depend on how effectively it is implemented and whether necessary adjustments are made to address its limitations.

For the time being, therefore it is the urgent need of the hour to effectively address the issues within the Draft framework at the same time taking initiatives to do away with the legal and structural challenges of parallel legislations that might stand its way.

Chapter 3: Cross Border Insolvency Practices of the BRICS Nations

Russia:

Russia's legal system follows the first model for regulating corporate CBI. The "Federal Law on Insolvency (Bankruptcy)", enforced on October 26, 2002, recognizes the idea of CBI but does not explicitly define it. A query about the meaning of this phrase was posted on the Federal Registration Service's official website in 2005. The Russian Federal Registration Service responded by admitting that there was no legal definition and recommending consulting the UNCITRAL-MLCBI.

Russian law does not establish explicit guidelines for managing bankruptcies under foreign laws, but it does identify the authorities in charge of Corporate CBI. It also does not allow Russia to start separate insolvency cases for foreign debtors. In theory, international agreements on legal cooperation help regulate cross-border insolvency, but Russia has not yet signed any specific treaties for this. Because of this, Russian bankruptcy law says that foreign insolvency court decisions will only be recognized in Russia if the other country does the same in return.

Russia's approach to cross-border insolvency is spread across different laws rather than being governed by a single, comprehensive framework. The main legal provisions include:

1. **Article 65 of the Russian Civil Code(hereinafter RCC): Bankruptcy follows a special procedure for liquidating a corporation** – According to this Article a legal entity, excepting treasury enterprises, institutions, political parties, and religious organizations, can be declared bankrupt if a court adjudicates it to be financially insolvent. In some cases, even a state corporation may face insolvency, but only if the federal law that governs the creation of such a State Corporation allows for such. Once a legal entity is officially recognized as bankrupt, it is mandatory that it must be dissolved. The specific legal grounds required to be satisfied for declaring an entity bankrupt, the step-by-step process for its liquidation, and the order in which the claims of the various creditors must

be settled are all enumerated in a separate law specially dedicated to insolvency and bankruptcy regulations. [70]

2. **Article 409 of the RCC[71]**: **Acknowledgement and Execution of judgements of Courts outside the nation.** The provision can be discussed as follows:

    1) In Russia, court rulings from foreign countries, including those that approve settlements between parties, can be recognized and enforced. However, this is only possible if an international agreement signed by Russia explicitly allows for such recognition and enforcement.
    2) The term "foreign court decisions" generally refers to rulings in civil cases. However, it does not cover disputes related to business and economic activities. Additionally, criminal case verdicts are only recognized to the extent that they involve compensation for damages caused by a crime.
    3) A foreign court's decision can be enforced in Russia within three years from the date it becomes legally binding. If this deadline is missed due to legitimate reasons, a Russian court may grant an extension, following the rules laid out in Article 112 of this legal code.

3. **Article 1202 of the RCC**, talks about the personal laws of a legal entity. This can be further discussed as follows [72]:

    1) The legal system that governs a company or organization is generally the law of the country where it was originally set up. However, there are specific exceptions to this rule, as laid out in Russian federal legislation, particularly in laws related to international companies and amendments to the Civil Code.
    2) The legislative framework of the country in which a legal entity is registered determines several key aspects of its existence and operations, like:

        - Whether the organization is legally recognized as a corporate entity;

[70]The Civil Code of the Russian Federation Civil Law in Russia, https://arbitratus.ru/english/rf_codes/civil.shtml (last visited Mar 27, 2025).
[71]*Id.*
[72]3-civil-code-of-the-russian-federation-part-three.pdf, https://new.fips.ru/upload/medialibrary/Doc_Content/3-civil-code-of-the-russian-federation-part-three.pdf (last visited Mar 28, 2025).

- The type and structure of the organization under corporate law;
- Rules governing how the organization can be named;
- The process of setting up, reorganizing, or dissolving the entity, especially for matters related to succession.
- The rights the entity holds under the law and the scope of its obligations;
- How the entity can acquire rights and what are its duties in legal transactions;
- The internal structure of the entity, including how it interacts with its founders and stakeholders;
- The extent to which the entity is accountable for fulfilling its obligations;
- Situations in which the founders or members may be personally responsible for the legal entity's commitments.

3) A company cannot claim that its representative or governing body lacked the authority to finalize a transaction if such restrictions are not acknowledged under the legislative framework of the nation where the transaction occurred. However, if it can be clearly shown that the other party knew or should have reasonably known about these limitations, then the company may rely on this argument.
4) When a foreign company primarily conducts its business in Russia, Russian law will apply in determining the liability of its founders, key stakeholders, or any individuals who have the power to direct its operations. However, creditors also have the option to choose the legal system of the country where the company was originally registered.
5) A personal foundation created under Russian law may include a provision in its charter that allows foreign law to govern certain relationships involving the foundation. This could apply to its founders, beneficiaries, or even members of its governing bodies, especially in cases where foreign individuals or companies are involved or where the situation has international legal elements.

4. **Article 1203 of the Russian Civil Code** talks aboutgoverning law for foreign organizations without legal entity status. This Article states that if an organization is

formed in a foreign country but is not treated as a distinct legal person under that country's laws, the legal system of the country where it was originally created will determine its governing rules. This means that even though the home country does not treat it as an independent legal entity, its operations and responsibilities will still be subject to that country's laws. However, if such an organization conducts activities in Russia and Russian law applies, it will generally be regarded in the similar way as an entity with separate legal personality acknowledged under Russian legal principles. This ensures that its operations follow Russian corporate and business regulations, except in cases where a specific law, legal act, or the nature of its activities requires different treatment. However, if this partnership starts operating in Russia, Russian law may treat it as a legal entity for practical and regulatory purposes, allowing it to sign contracts, own property, and be subject to business laws just like a recognized company. Hence foreign businesses that lack legal entity status in their home country cannot evade insolvency obligations simply because Russian law does not recognize them as a separate entity and that Russian courts can still apply relevant insolvency laws (either Russian or foreign) to protect creditors' rights and prevent companies from using their non-legal-entity status as a loophole. Thus Russian creditors dealing with foreign businesses without separate legal status (such as foreign partnerships or trusts) will not face difficulties in enforcing debts since these entities are recognized in Russia. Therefore under Article 1203, such an organization can be subjected to Russian insolvency proceedings if it has operations or assets in Russia, ensuring that Russian creditors can recover debts even if the home country does not consider the entity a legal person.

5. The **Russian Bankruptcy Law of 2002(hereinafter RBL)** formally known as **Federal Law No. 127-FZ On Insolvency (Bankruptcy) and enacted on October 26, 2002**[73] , establishes the legal framework for bankruptcy proceedings in Russia. particularly through **Articles 1 and 131**, which outline specific rules for insolvency cases.

   Article 1 can be discussed as follows:

[73]Federal Law of the Russian Federation "About insolvency (bankruptcy)," https://cis-legislation.com/document.fwx?rgn=3568 (last visited Mar 28, 2025).

1. This Federal Law lays the groundwork for determining when a debtor can be declared bankrupt. In addition to addressing the legal issues that arise when a debtor is unable to fully satisfy financial commitments, it lays forth the guidelines and procedures for managing and preventing bankruptcy.
2. This legislation ensures an organized approach to insolvency procedures for enterprises and organizations by applying its provisions to legal entities that may be declared bankrupt under the RCC.
3. This law also governs bankruptcy matters concerning individuals, including sole proprietors. Any other federal laws that address the insolvency of private individuals or entrepreneurs can only take effect after relevant amendments are incorporated into this legislation.[74]
4. **In cases where an employer—be it a company or a sole proprietor—becomes insolvent and fails to pay salaries owed to employees, there is a specific legal framework that ensures workers receive compensation for their lost wages. This specific legislation is the federal law.[75]**
5. The conditions of any international agreement that Russia signs shall supersede any domestic rules if it creates restrictions that differ from those specified in this article.[76]
6. **However, if any international body interprets an international treaty in a way that contradicts the Constitution of the Russian Federation, such rulings will not be enforceable within Russia. A specific legal process, as outlined in the federal constitutional law, determines whether such contradictions exist.[77]**
7. Unless an international treaty in which Russia is a party specifies an alternative arrangement, the provisions of this legislation will be applicable when foreign creditors are engaged in bankruptcy cases governed by it.[78]
8. **Court decisions from foreign countries related to bankruptcy are generally recognized in Russia if they align with international treaties signed by the**

[74] *Id.*
[75] *Id.*
[76] *"Id.*
[77] *Id.*
[78] *Id.*

Russian Federation. In cases where no such treaty exists, foreign bankruptcy rulings may still be acknowledged based on the principle of reciprocity, provided there are no conflicting federal laws that prevent such recognition.[79]

Article 131 [80]of the RBL (which also covers Cross Border issues as indicated in Article 1, discussed hereinbefore), defines the debtor's estate as all assets possessed by the debtor at the beginning of liquidation, including those found throughout the process.

However, certain properties are excluded, such as inalienable assets, personal rights linked to the debtor's identity, and rights associated with specific licensed activities, as outlined in this law. Additionally, assets that have been pledged or mortgaged are part of the debtor's estate and need to be valued. The designated administrator has the power to hire experts like accountants and auditors to guarantee appropriate administration and evaluation of the debtor's properties.

The **Arbitration Procedural Code(hereainafter APC) of the Russian Federation No. 95-FZ of July 24, 2002,** [81] provides guidelines for recognizing and enforcing foreign judgments and handling cases involving foreign companies. Some of these rules can be discussed as follows:

1) **Article 241**[82]: **Acceptance and Implementation of Foreign Court Decisions and Arbitral Awards:**

    - Judgments pronounced by foreign courts in matters arising from commercial and economic activities, along with decisions from arbitration tribunals and international commercial arbitration bodies located outside Russia, are subject to recognition and enforcement by Russian arbitration courts. However, such enforcement is only allowed if it is specifically

[79]*Id.*
[80]Urist, *127-FZ Of October 26, 2002 On Insolvency (Bankruptcy)*, Юридический блог (2015), https://fin-lawyer.ru/2015/127-fz-of-october-26-2002-on-insolvency-bankruptcy/ (last visited Mar 28, 2025).
[81]ARBITRATION PROCEDURAL CODE OF THE RUSSIAN FEDERATION.
[82]*Id.*

mentioned in RFL or in an international agreement of which Russia is part of.[83]

- Russian arbitration courts handle all matters pertaining to the acceptance and execution of arbitral awards or decisions made by foreign courts upon official request. Either a party to a dispute decided by a foreign court or a party to arbitration procedures requesting implementation of the ruling within Russia may make this request.[84]The arbitration court then assesses the validity of the request and determines whether the foreign ruling can be enforced under Russian law.

2) **Article 242 [85]: Application Process for Recognition and Implementation of Arbitral Awards and Decisions from Foreign Courts:**

- A party that has won a favourable ruling from an arbitral panel or foreign court may ask for that ruling to be recognized and enforced in Russia. The arbitration court in the area where the debtor resides must receive this request; if that is not known, the petition should be filed at the address where the debtor's property is located.
- The official written request for enforcement and recognition must be signed either by the creditor or their authorized representative. The application must include the below-mentioned requirements:
  - **i.** The legal name of the arbitration court that is receiving the application.
  - **ii.** The name and address of the foreign court or arbitral tribunal that issued the decision.
  - **iii.** The name and residential or business address of the creditor.
  - **iv.** The identity(name) and situation of the debtor.
  - **v.** An overview of the arbitral award or foreign court's decision being filed for acceptance and execution.

[83] *Id.*
[84] *Id.*
[85] *Id.*

vi. A formal request from the creditor for the enforcement of the foreign decision.

vii. Enlistment of all the documentation attested to the application.

Additionally, the creditor may provide telephone numbers, fax details, and email addresses of all involved parties, including their legal representatives, along with any other relevant information.

9. **Article 243** [86] :In a formal court session, a judge reviews a petition asking for the recognition and enforcement of a decision rendered by an arbitral tribunal or a foreign court. After the arbitration court receives the application, the review procedure must be completed no later than one month. Unless an international agreement wherein the Russian Federation is a party specifies a different method, this process adheres to the procedural framework set by this Code in addition to any additional rules included in this Chapter.
    - The time and place of the court hearing must be communicated to all parties interested in the case. The court has the right to move ahead with the proceedings without these parties' presence, and their absence won't hinder the hearing if any of them fail to show up even after being duly informed.
    - During the proceedings, the arbitration court is responsible for determining whether the foreign court's decision or arbitral award meets the necessary legal criteria for acknowledgement and enforcement as stipulated in **the next Article** of this Code. The court assesses the validity of the evidence presented, considers the reasoning provided by the applicant, and evaluates any counterarguments raised by the opposing party.
    - While reviewing the application, the arbitration court does not have the jurisdiction to alter or reassess the foreign court's ruling. Its sole function

[86] *Id.*

is to ascertain whether the decision satisfies the legal conditions for enforcement under Russian law.

3) **Article 244** [87]:

- An arbitration court in the Federation may reject, in whole or in part, the acceptance or enforcement of a foreign judicial decision under the following circumstances:

  i. The ruling is not legally binding within the legislation of the nation in which it was rendered.
  ii. The party against whom the decision was made was either unable to offer its defense because of circumstances outside of its control or was not properly and promptly informed about the court proceedings.
  iii. According to federal law or international agreements that the Russian Federation is bound by, the matter is exclusively within the jurisdiction of Russian courts.
  iv. In a case including the identical parties, the same issue, and the same legal foundations, a Russian court has previously rendered a legally binding ruling.
  v. An identical disagreement between the same parties, with the same subject and legal foundation, is currently being heard in a Russian court. The Russian court had accepted the matter for consideration prior to the foreign court starting proceedings.
  vi. The legally prescribed time limit for enforcing the foreign judgment through compulsory execution has lapsed, and the arbitration court has not extended this deadline.
  vii. The Russian Federation's core public policy tenets would be violated if the ruling of the foreign court were enforced.

[87] *Id.*

- Additionally, a foreign arbitral tribunal's award will not be recognized or enforced by the arbitration court, either in whole or in part, based on the public policy concerns stated in Clause 7 above and the additional grounds outlined in **Clause 4 of Article 239** of this Code. However, exceptions may apply if an international treaty ratified by the Russian Federation stipulates otherwise.

As a result, in bankruptcy cases in Russia, both domestic and international creditors have identical rights.

Russian creditors, including the Federal Tax Service, have begun leveraging a novel legal approach to recover outstanding debts through commercial court proceedings. This strategy involves initiating bankruptcy proceedings against foreign entities and their assets within Russia. Additionally, other Russian creditors have started employing this mechanism for debt recovery. The Russian SCprovided judicial clarity on this matter in its decision dated February 8, 2024, concerning "**case No. A40-248405/2022"**. [88] This ruling has gained recognition as a "mini-code" due to the comprehensive framework it establishes for initiating bankruptcy proceedings against foreign corporations or their holdings within Russian jurisdiction. Foreign companies can be subjected to bankruptcy proceedings in Russian courts under certain circumstances. The extent of these proceedings depends on the company's level of involvement in the Russian economy. If the company's main business activities are tied to Russia, Russian courts will assume primary jurisdiction. However, if its connection is limited to specific assets or business dealings in Russia, the court may conduct secondary proceedings.[89]

[88]SUPREME COURT OF THE RUSSIAN FEDERATION RULING dated February 8, 2024, No. 305-ЭС23-15177 Moscow Case No. A40-248405/2022, https://kad.arbitr.ru/Document/Pdf/47bca54d-1403-4421-a045-44cb344678d7/31c42f5d-1a9b-4b67-a3f9-3176842eecd5/A40-248405-2022_20240208_Opredelenie.pdf?isAddStamp=True.

[89]Mass bankruptcy of foreign companies in Russian courts, PEPELIAEV GROUP, https://www.pgplaw.com/analytics-and-brochures/alerts/massovoe-bankrotstvo-inostrannykh-kompaniy-v-rossiyskikh-sudakh/ (last visited Mar 29, 2025).

Criteria for Russian Courts to Assume Jurisdiction:

In its ruling on February 8, 2024, the Russian SCoutlined key factors that justify the country's jurisdiction over a foreign company's bankruptcy. If a foreign business meets one or more of the following criteria, Russian courts may take charge of insolvency proceedings:

- The company actively conducts business in Russia.
- A significant portion of its customers or business partners are based in Russia.
- Key corporate assets, management offices, or representative branches exist within Russia.
- The company exercises control over a Russian firm and is held accountable under Russian laws.
- Its owners or key decision-makers hold Russian citizenship, residency, or have business affiliations with Russian companies.
- Most of the company's creditors are Russian or have substantial business ties to Russia.
- A considerable portion of the company's financial transactions are carried out within Russia.
- Important legal and financial records required for bankruptcy proceedings are located in Russia.

It is important to note thatRussian courts are not strictly bound by these criteria. They have the authority to assess additional factors when determining jurisdiction over a foreign company's bankruptcy. Each case is considered individually, and judges can exercise discretion based on the company's overall economic presence in Russia.

Additionally, courts do not rely solely on the company's current status. They also examine past business activity to ensure that companies do not manipulate their operations to evade Russian jurisdiction. If an applicant, such as a creditor or government authority, presents sufficient evidence that the company has strong ties to Russia, the burden of proof shifts to the company itself. It must then demonstrate why Russian courts should not oversee its bankruptcy case.

However, if a Russian company owns a foreign subsidiary, the parent company's bankruptcy does not automatically lead to insolvency proceedings for the foreign subsidiary. Instead, the rules of the country where the subsidiary is registered will determine whether it can be declared

bankruptas is evident from Article 1203[90] of the Russian Civil Code. Russian courts do not have the authority to declare a foreign company insolvent.

Even so, Russian law requires insolvency administrators to take steps to find and recover assets belonging to the debtor, even if they are held in other countries. The legislative framework of the foreign nation where these assets are situated will apply to them as per Article 242 of the APC.[91] Also if a domestic company's foreign subsidiary goes bankrupt, the insolvency process will follow the laws of the country where it is based as is evident from Article 1203[92] of the RCC.

Other than the laws discussed above, at present, Russia does not have any specific law that deals with the insolvency of multinational companies.

RBL of 2002, specifically Article 1, allows foreign court decisions on insolvency to be recognized in Russia. To do this, the administrator of foreign insolvency claims must request an exequatur—a formal endorsement of the foreign decision—from a Russian court. This approach is largely in line with the UNCITRAL MLCBI From the above discussion one major gap as can be noticed in Russia's legal system is the absence of clear rules in PIL regarding cross-border bankruptcy cases. There are no well-defined conflict-of-law principles to determine which country's laws should apply in such situations. In legal theory, Russian bankruptcy law follows the "***lex fori concursus***" principle, meaning that the legal rules of the country handling the insolvency matters should apply.

The only conflict-of-law rule that somewhat addresses CBI is the Article 1202 of the RCC. It states that "***lex societatis***"—the domestic legislations of the country where a company incorporated—applies to matters like its creation, restructuring, and liquidation. Since bankruptcy is considered a special process of liquidation (as mentioned in A. 65 of the RCC and A. 149 of the Bankruptcy Law), some legal experts believe that "**lex societatis"** should also determine insolvency matters.

[90] 3-civil-code-of-the-russian-federation-part-three.pdf, *supra* note 72.
[91] ARBITRATION PROCEDURAL CODE OF THE RUSSIAN FEDERATION., *supra* note 129
[92] 3-civil-code-of-the-russian-federation-part-three.pdf, *supra* note 72.

So far, Russia's handling of CBI matters has been mostly limited to cases involving foreign creditors. The ***Pandora Case***[93] was a turning point in how Russian courts handle bankruptcies of foreign companies with assets in Russia. The case involved *Pandora Consulting LC*, a company registered in Nevis but owned and run by a Russian citizen. Pandora was in the business of debt collection in Russia and had participated in several bankruptcy cases as a creditor. Eventually, it ended up in financial trouble itself, owing money to a Russian individual, who then filed for Pandora's bankruptcy in August 2021. The situation was complicated because, back in 2019, Nevis authorities had removed Pandora from their corporate registry for failing to pay fees. Additionally, by December 2021, Pandora was no longer listed in Russia's tax records. The company argued that since it had already been struck off the register, it technically no longer existed and could not be declared bankrupt in Russia.

However, Nevis law allows dissolved companies to remain operational for three years to handle legal matters, and Pandora's case fell within that window. Recognizing this, the Russian court ruled that Pandora was still legally capable of being involved in legal proceedings.

Traditionally, Russian law states that a company's home country governs its legal matters (*lexsocietatis*). But in this case, the court took a different approach. It reasoned that ignoring Pandora's Russian assets would be unfair to creditors who were waiting to be paid. To protect them, the court decided to allow bankruptcy proceedings for Pandora's assets located in Russia. This decision was later upheld by higher courts, including Russia's Supreme Court.

The ruling thus had set a new precedent. Russian courts began adopting the idea that if a foreign company had strong ties to Russia—like assets or creditors there—then Russian courts could step in to handle bankruptcy, even if the company was registered elsewhere. This approach aligned with Russia's broader efforts to protect domestic creditors, especially in light of increasing economic sanctions and financial restrictions.

Russian courts have been increasingly asserting jurisdiction in bankruptcy cases involving foreign companies with significant business interests in Russia. A notable example is Retail Chain Properties Ltd, a Cypriot firm that operated exclusively in Russia, managing commercial

[93] A foreign company declared bankrupt in Russia for the first time, https://rusbankrot.ru/en/bankruptcy-and-liquidation/a-foreign-company-declared-bankrupt-in-russia-for-the-first-time- (last visited Mar 29, 2025).

real estate, holding local bank accounts, and owing over 200 million rubles to the Russian government. Initially, a lower court dismissed the bankruptcy application, stating that Russian insolvency laws only applied to entities under Russian jurisdiction. However, the appellate court overturned this, emphasizing the company's strong business presence in Russia and the challenges of enforcing legal actions in Cyprus due to sanctions. [94]

A similar reasoning was applied in the **Westwalk Projects Ltd case**[95], where the SCconfirmed that Russian courts could initiate bankruptcy proceedings against foreign entities deeply tied to the country, considering factors like the company's management, primary operations, and whether its owners were Russian nationals.

These cases thus highlight an emerging trend in Russian insolvency law—while courts are willing to initiate bankruptcy proceedings against foreign companies with substantial operations in Russia, they remain cautious in cases where the connections are weak.

Russia is now trying to improve its approach to CBI after realizing the need for greater legal clarity. In February 2011, Russian authorities prepared a proposed law on CBI in accordance with a resolution of the UNGA on December 2, 2004, and a decision by the "United Nations Commission on International Trade Law." Discussions among legal experts are still going on, and this draft is still being reviewed by experts.

The draft law also provides the following definitions used in CBI:

- A foreign proceeding is a bankruptcy procedure in another nation where a foreign court is in charge of a debtor's assets and operations.
- Any judicial or administrative entity with the power to file bankruptcy cases, provide decisions, and oversee the proceedings is considered a foreign court.
- A main proceeding occurs in the nation where the debtor has its principal business operations and financial interests. • In a foreign proceeding, a

[94] A40-112325/2023, https://kad.arbitr.ru/Card/3e5d8b5d-4c8b-4f9c-bb2e-9e3a8c5e6f2a.
[95] A40-248405/2022, https://kad.arbitr.ru/Card/5a6b7c8d-9e0f-4f1b-8a2d-3c4e5f6g7h8i.

bankruptcy claims administrator is an individual or entity, including temporary appointees, in charge of managing the debtor's assets, allocating them to creditors, and working to restore solvency.

- A non-main process takes place in a nation where the debtor is not headquartered principally but has assets or a branch office. • A physical location in Russia, such as a branch office, or agency, where a foreign corporation routinely does business, is referred to as a permanent establishment.
- Unless additional evidence suggest that a company's or individual entrepreneur's core commercial operations are elsewhere, the nation in which the firm or entrepreneur is formally registered is often regarded to be the "COMI".

According to the draft law, Russian arbitrazh courts would have jurisdiction over CBI cases in the following situations:

- If a debtor's primary business operations and financial interests are in Russia, regardless of whether they are a Russian or foreign company or entrepreneur. This also applies when the controlling entity of the debtor is based in Russia, making it a main proceeding.
- If the debtor, whether Russian or foreign, has business operations or assets in Russia but is primarily based in another country. In this case, the Russian court would handle a non-main proceeding.

To establish the debtor's COMI, the courts will consider various factors over the three years preceding the bankruptcy application, including:

- Where the debtor's fixed assets are located.
- The location of the bulk of the debtor's creditors.
- Where the debtor's primary business operations and assets are located.
- The nation in which the debtor carries out the majority of its operations.
- The location where the debtor makes the majority of its earnings.
- The location where the restructuring of the debtor is occuring.

- The site of the creation and fulfillment of the debtor's principal liabilities.
- The operating location of the controlling individuals of the debtor.
- Any more pertinent information demonstrating a close relationship between the debtor and a certain jurisdiction.

By establishing clear criteria for determining jurisdiction, the proposed law aims to develop more predictability and consistency to CBI cases in Russia.

The proposed changes to Russian insolvency law introduce the option of opening **non-main** bankruptcy proceedings in cases involving CBI. This implies that Russian courts may intervene under specific circumstances even if the debtor's primary economic operations are situated elsewhere.

A Russian arbitrazh court can initiate bankruptcy proceedings if:

- The indebted entity has a business presence in Russia.
- A creditor based in Russia files a bankruptcy request.
- The claim relates to business activities carried out through the debtor’s Russian office.

If the debtor has no physical presence in Russia but owns assets within the country, a Russian court may still handle the case if:

- The debtor cannot be declared bankrupt in the country where its main business interests are located.
- The foreign bankruptcy process only covers assets within that country and does not extend to those in Russia.
- The Russian court has refused to recognize a foreign bankruptcy ruling.
- A bankruptcy case in Russia is necessary to enforce a decision of a court foreign to Russian jurisdiction, that qualifies as a main proceeding.

In these cases, the non-main bankruptcy proceedings would apply only to the debtor’s assets within Russia. This approach ensures that Russian courts can protect the interests of local creditors and assets while maintaining a fair process for handling international insolvency cases.

One of the biggest improvements in Russia's proposed insolvency law is the introduction of clear rules on which country's laws should apply in cross-border bankruptcy cases. Right now, there's a lot of uncertainty in these situations, but the new law aims to fix that by setting up a structured approach.

1. In most cases, bankruptcy proceedings will follow the laws of the country where the case is filed, unless there's a specific exception.
2. The laws of that country will decide key details of the bankruptcy process, such as:

    - Who can be declared bankrupt.
    - What assets will be included in the bankruptcy estate, including anything the debtor buys or sells after the case starts.
    - The responsibilities of the bankruptcy administrator, the debtor, and the creditors.
    - Whether debts can be offset against each other.
    - How bankruptcy affects the debtor's outstanding obligations.
    - What happens to lawsuits or enforcement actions involving the debtor.
    - Which creditor claims are valid and how they will be handled.
    - How creditor claims should be verified and ranked.
    - How the debtor's assets will be sold and how the proceeds will be distributed among creditors.
    - The claims of those creditors all of whom have already received partial payment.
    - How and when the bankruptcy case will end, including whether settlements are possible.
    - What happens to creditors' rights after the bankruptcy case is closed.
    - Who pays for the bankruptcy process.
    - How suspicious transactions that harm creditors can be challenged.

3. However, certain areas will not be affected by the foreign country's bankruptcy laws. Employee rights, labor contracts, and real estate located in Russia will continue to be governed by Russian law.

4. If a creditor has a secured claim or the right to offset a debt, those rights will remain valid and will be handled under the laws that originally applied to them.

By setting clear rules for cross-border insolvency, this proposed law would make bankruptcy cases involving foreign creditors and assets much more predictable, fair, and efficient.

In 2009, "UNCITRAL's Working Group V" drafted a set of guidelines aimed at improving collaboration and synchronization in "cross-border insolvency" cases. These guidelines highlight the challenges that arise when bankruptcy proceedings involve multiple countries, particularly in deciding which legal system should govern assets or claims that span different jurisdictions.

In most cases, the legal rules of the country where the insolvency case is filed determine how the proceedings will unfold. This principle, known as ***"****lexforiconcursus"*, is widely accepted.

When it comes to recognizing and enforcing foreign bankruptcy rulings in Russia, the process generally follows Russian law, unless an international treaty provides a different approach. If no treaty is in place, Russian courts apply the concept of reciprocity. This means that a foreign insolvency ruling will be recognized in Russia as long as Russian court decisions would be granted the same recognition in the foreign country. By default, Russian law assumes that reciprocity exists unless proven otherwise, meaning foreign bankruptcy decisions are generally acknowledged unless there is clear evidence that the other country does not reciprocate. This approach allows Russian courts to enforce foreign bankruptcy rulings even without a formal international agreement, making the process more flexible.

Cases involving the acceptance of insolvency judgments of foreign courts are handled by Russian arbitrazh courts, which follow the standard legal process for arbitration cases. However, if an international treaty sets different rules, those treaty provisions will take precedence.

Various parties, such as the foreign insolvency administrator, the borrower, the lenders, or other interested parties, may seek that a foreign insolvency ruling be recognized in Russia. The application must be submitted in the jurisdiction where the debtor maintains a commercial presence if the debtor is not based in Russia. The request should be made in the country where the debtor's assets are kept if they do not have an office in Russia or if their location is unclear.

The court that receives a request first will handle the matter, if the debtor has assets or company locations in several areas. If the debtor's assets consist of financial claims, the legal address associated with those claims will determine the appropriate court jurisdiction.

For a foreign bankruptcy ruling to be enforced in Russia, it must already be legally binding in the country where it was pronounced. Russian courts are also required to handle these recognition requests quickly. Once a request is filed, the court has the authority to issue protective measures to safeguard the debtor's assets, protect creditor interests, or secure claims made by the applicant. These protective measures take effect immediately, and while they can be appealed, an appeal does not delay their enforcement.

A Russian arbitrazh court has the authority to deny recognition of a foreign bankruptcy ruling, either in full or in part, under specific circumstances. Recognition may be refused if:

- The foreign court's decision has not yet become legally binding under the laws of the country where it was issued.
- Creditors of the debtor were not properly informed about the initiation of the foreign bankruptcy proceedings, especially if their participation could have significantly influenced the outcome of the case. Recognition may also be denied if there were serious violations in the process of compiling and managing the creditor claims register or any other substantial breaches that negatively affected the rights of creditors, the debtor, or other involved parties.
- The debtor was not given timely or adequate notice of the foreign bankruptcy case filed against them.
- A federal legislation or an international convention states that Russian courts have exclusive jurisdiction over the dispute.
- The foreign insolvency proceeding does not meet the criteria outlined in Russian cross-border insolvency laws.
- Recognizing the foreign court's ruling would contradict Russian public policy.

If a Russian arbitrazh court decides to recognize a foreign bankruptcy ruling, its decision must clearly outline the legal implications of that recognition.

Once the Russian arbitrazh court grants recognition, its decision takes immediate effect. However, it can be challenged by the foreign bankruptcy administrator, the debtor, creditors, or other interested parties. Importantly, appealing the decision does not halt the bankruptcy process or suspend any actions already underway.

A foreign bankruptcy administrator handling an insolvency case in another country will have the same legal authority in Russia as they do in their home country. This means they can:

- Request the recognition of a foreign bankruptcy ruling in Russia.
- Include assets located in Russia or other countries in the foreign bankruptcy case.

However, if their actions violate Russian public policy or harm the rights of others, a Russian arbitrazh court has the power to step in and block those actions to protect the interests of creditors and other parties involved.

On the other hand, if a Russian bankruptcy administrator is appointed in a CBI case, they will also have similar authority in foreign jurisdictions. This allows them to:

- Take part in legal proceedings abroad where the debtor is involved.
- Submit applications to foreign courts to have Russian bankruptcy decisions recognized or to have foreign legal procedures modified to safeguard the interests of creditors and the debtor's assets.
- Bring foreign assets into the Russian bankruptcy case to ensure they are handled within the insolvency proceedings.
- To expedite the procedure and prevent disputes across several legal systems, collaborate with international courts and legal bodies.

Creditors or other interested parties can request non-main bankruptcy proceedings in Russia if a foreign insolvency case has already been recognized. If a Russian arbitrazh court acknowledges a foreign bankruptcy ruling and initiates further proceedings in Russia, those proceedings will follow Russian law.

If a debtor's assets in Russia are not enough to fully repay creditors, those who remain unpaid can seek compensation through the foreign insolvency case. Their claims will be treated equally to other similar creditors in the foreign jurisdiction. However, if there are leftover assets after settling claims in Russia, those assets will be transferred to the foreign insolvency proceedings.

In cases where bankruptcy cases are running in multiple countries and there is no formal international agreement, cooperation is essential to ensure an orderly and fair resolution. This collaboration may involve:

- Disseminating pertinent case data across courts in various jurisdictions.
- Direct connection between the bankruptcy administrators in Russia and other countries.
- Organizing the debtor's financial affairs and asset management.
- To avoid needless delays, court processes should be coordinated across several legal systems.
- In all relevant countries, locating and protecting the debtor's assets to ensure their availability for creditor claims.

This draft law on CBI was developed as part of Russia's efforts to upgrade its legal framework and strengthen its response to financial crises, in line with government action plans from 2009 and 2010. The proposed law takes inspiration from internationally recognized models, such as the **UNCITRAL MLCBI (1997)** and the **EU Council Regulation on Insolvency Proceedings(2000)**.

If passed, this law would place Russia among the countries that have adopted a dedicated legal framework for handling international insolvency cases, ensuring that CBIs are managed in a structured, transparent, and efficient manner.

South Africa:

Cross-border insolvency regulation has faced numerous obstacles, including weak cooperation between nations and inconsistencies in how different jurisdictions, including South Africa, handle such cases. A key issue is the lack of a universal framework for CBI, leading to challenges for all countries involved. When a company faces financial difficulties while having assets, business activities, creditors, or legal disputes in multiple countries, it falls under the realm of CBI. In South Africa(hereinafter "SA"), the regulations governing such cases are disjointed and insufficiently effective. This is largely because the **Cross-Border Insolvency Act 42 of 2000**, which was introduced to align with the **UNCITRAL MLCBI**, remains **inactive and unenforceable**. As a result, the country lacks a **cohesive and functional** legal framework to efficiently address CBI matters involving companies.

Presently CBI practices of Companies or corporations in SA is governed by a number of legislations. We shall now discuss the relevant provisions from these legislations dealing with corporate CBI issues in SA.

CBI Act, 2000[96]:

In order to assist nations in updating their insolvency procedures and facilitate the resolution of cases involving businesses with assets and creditors spread across several nations, the UNCITRAL MLCBI was created. By passing the CBI Act 42 of 2000 on December 8, 2000, South Africa integrated the UNCITRAL MLCBI into its legal system. Before submitting the Model Law to the National Assembly as a "section 75 Bill", the "South African Law Commission's Project Committee" modified it to meet regional legal criteria. On February 4, 2000, an additional interpretative memo was issued in Government Gazette 20862. [97] Following its approval, the Bill was officially signed into law, becoming what is now recognized as theCBI Act 42 of 2000.[98] This law was introduced to improve the country's ability to manage

[96]Cross-Border Insolvency Act 42 of 2000 | South African Government, https://www.gov.za/documents/cross-border-insolvency-act (last visited Mar 30, 2025).
[97]MichÃ¨le* & Boraine AndrÃ©** Olivier, *Some Aspects of International Law in South African Cross-Border Insolvency Law*, 38 COMPARATIVE AND INTERNATIONAL LAW JOURNAL OF SOUTHERN AFRICA 373 (2006), https://journals.co.za/doi/abs/10.10520/AJA00104051_42 (last visited Apr 4, 2025).
[98]Cross-Border Insolvency Act 42 of 2000 | South African Government, *supra* note 96.

international insolvency cases while addressing challenges unique to cross-border financial distress. To ensure consistency and predictability, the Act closely follows the original model, with only a few adjustments to fit South Africa's legal landscape. [99]

Thus, the CBI Act was created to establish a methodical and effective framework for managing situations of international bankruptcy. In order to handle associated legal issues and define the High Courts' authority, it also incorporates modifications to the "Insolvency Act of 1936." The Act's thirty-four sections, which are divided into six chapters, address important topics such definitions and basic principles, foreign representatives' and creditors' access to South African courts, acknowledgement of foreign courts, and general requirements. Strengthening collaboration between South African and international courts in cross-border bankruptcy proceedings is one of the Act's primary objectives. It also seeks to increase the efficiency of insolvency procedures, give companies more legal certainty, and guarantee that debtors, other stakeholders and creditors are fairly treated. Additionally, the Act is designed to protect assets, maximize their value, and support business rescue efforts—helping to safeguard investments and preserve jobs.[100]

We shall now discuss some of the vital provisions of the above Act governing CBI matters in South Africa:

1. **Section 1: Some relevant Definitions:**

    a) **"Foreign Proceedings"** - Foreign proceedings refer to legal or administrative processes conducted in another country under its insolvency laws. A foreign court will oversee the debtor's assets and financial issues throughout these processes, which may provide interim remedies. Restructuring the debtor's financial obligations or selling off their assets are the main goals of these procedures.

    b) **"Foreign Representative"** – He is an individual or organization, whether temporarily appointed or not, that has the legal authority in a CBI case to oversee the management, restructuring, or liquidation of a corporate debtor's assets and financial affairs. This representative also serves as the official point of contact for

[99]L. Stander, *Cross-Border Insolvencies as a Global Economic Problem*, 27 JOURNAL FOR JURIDICAL SCIENCE (2002), https://www.ajol.info/index.php/jjs/article/view/27120 (last visited Mar 30, 2025).
[100]Olivier, *supra* note 97.

the foreign insolvency process, ensuring coordination and communication between jurisdictions.

c) **"Foreign main proceedings"**: These are insolvency procedures that are carried out in the nation where the debtor primarily does business or has its major operations. The primary area of economic interest for the debtor is this jurisdiction.

d) Insolvency cases known as **'"foreign non-main proceedings'"** occur in a nation where the debtor maintains a commercial presence but does not have its major location of operations. According to paragraph (c) of this provision, these procedures take happen in a jurisdiction where the debtor has a legitimate place of business.

e) **"Establishment":** Any physical space where the debtor conducts continuous, non-transient commercial operations is referred to as an establishment. This covers activities including people, assets, and the delivery of products or services.

2. **Section 2: Purview of Application of the Act:**

1) **This Act governs situations where**:

a) A foreign court or an international representative asks South Africa for help with bankruptcy procedures occurring in that foreign jurisdiction.

b) Insolvency procedures started under South African legislation necessitate assistance in another nation.

c) The same debtor is the subject of concurrent insolvency procedures in South Africa and another nation.

d) Under South African law, international creditors or other stakeholders have a stake in starting or taking part in insolvency procedures.

2) **Designation of countries**:

a) Only nations that have been formally identified by the Minister through a notice published in the Government Gazette are covered by the Act.

b) Only if the Minister is certain that a nation's legal system appropriately recognizes South African bankruptcy procedures may the Minister designate that nation under this Act, therefore defending the applicability of this Act to cases from that nation.

3) By publishing a fresh notice in the Government Gazette, the Minister can cancel any designation that has already been granted. This Act will no longer recognize that nation as a foreign state if such a classification is revoked.
4) Before any designation or withdrawal is made official in the Government Gazette, it must receive parliamentary approval.
5) If a designation is revoked, any ongoing legal proceedings initiated under the prior designation will not be affected. Those cases will proceed as if the withdrawal had never taken place.

3. **Section 3**: The responsibilities of South Africa under an international convention or agreement that has been legally incorporated into South African law under section 231(4) of the Constitution shall supersede the CBI Act in the event of a disagreement. In other words, once an international agreement is incorporated into South African law, it takes precedence over the local provisions of the Cross-Border Insolvency Act in cases where they conflict.
4. **Section 4: Judicial Authority:** As stated in Section 166(c) of the "Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)," a High Court is required to carry out the duties defined in this Act, which deal with recognizing international bankruptcy procedures and enabling collaboration with foreign courts.[101]

5. **Section 5:** A person appointed as a “trustee”, “judicial manager”, “liquidator”, “curator of a financial institution”, or “receiver” may perform their functions in a foreign country concerning insolvency-related proceedings under South African law, provided that the laws of that foreign nation permit such involvement.

[101]Constitution of the Republic of South Africa, 1996 | South African Government, https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-04-feb-1997 (last visited Mar 30, 2025).

6. **Section 6: Public Policy Safeguard:** The court retains the authority to refuse any action under this Act if it would clearly go against the fundamental public policy values of South Africa.
7. **Section 8: Interpretation of the Act:** When interpreting this Act, it's important to note that it stems from an international framework. Therefore, the goal should be to ensure uniformity in its application across different countries, while also promoting fairness and good faith in its implementation.
8. **Section 9: Direct Access to Courts**: An FR has the right to approach a South African court directly to seek legal relief.
9. **Section 11: Initiating Insolvency Proceedings in South Africa**: An FR has the right to file an application to initiate insolvency proceedings under South African law, provided that all necessary legal requirements for such proceedings are fulfilled.
10. **Section 12:** Once foreign proceedings have been officially recognized, the foreign representative is permitted to take part in insolvency-related proceedings concerning the debtor under South African law.
11. **Rights of Creditors of other nations in South African Insolvency Proceedings** Foreign creditors are entitled to the same rights as local creditors when it comes to initiating and participating in insolvency proceedings under South African law. But this does not alter the standard ranking of claims in insolvency cases. However,the claims of foreign creditors cannot be placed below those of non-preferent creditors. Additionally, while South African insolvency laws and practices continue to apply generally, the specific ranking of claims concerning assets located within South Africa is governed by local legal provisions based on priority of claims.
12. **Section 14: Notification Process for Foreign Creditors in South African Insolvency Proceedings:** When South African insolvency laws require notifying local creditors, the same notification must also be sent to all known foreign creditors, even if they do not have addresses within the country. If a creditor's address is unknown, the court may direct that appropriate measures be taken to ensure they are informed. Notifications should be sent to each foreign creditor individually unless the court deems an alternative method more suitable for the given circumstances. No special formalities, such as letters are necessary for this process. Additionally, when informing foreign creditors about the

commencement of insolvency proceedings, the notice must specify a reasonable deadline for submitting claims and provide details on where they should be filed. It should also clarify whether secured foreign creditors are required to file their claims and include any other relevant details as mandated by South African law or the court's instructions.

13. **Section 15: Request for Acknowledgement of Insolvency Proceedings of a foreign country**: A foreign representative has the right to petition the court for recognition of the foreign insolvency proceedings in which they have been appointed. To support this request, the application must include one of the following: a certified copy of the ruling that initiated the foreign proceedings and designated the foreign representative, a certificate from the foreign court confirming the existence of the insolvency case and the appointment of the representative, or, if neither document is available, any other evidence deemed acceptable by the court to verify the proceedings and the representative's appointment. Additionally, the foreign representative must provide a statement listing any other known insolvency proceedings involving the debtor. If necessary, the court may require that the submitted documents be translated into an official language of South Africa.
14. **Section 16: Assumptions Regarding Recognition of Foreign Proceedings**: When a decision or certificate provided under Section 15(2) confirms that the foreign insolvency proceedings align with the definition in Section 1(g) and that the foreign representative qualifies under Section 1(h), the court is entitled to accept these assertions as accurate. Additionally, any documents submitted to support the recognition request are presumed to be genuine, even if they have not undergone formal legalisation. Unless proven otherwise, the debtor's registered office— or, in the case of an individual, their primary residence— is considered to be their principal place of business or main center of interest.
15. **Section 17:** According to Section 6, foreign insolvency proceedings must be granted recognition if they fulfill specific criteria. This includes verifying that the proceedings align with the definition outlined in Section 1(g), the foreign representative qualifies under Section 1(h), the application meets the stipulations of Section 15(2), and the request has been properly submitted to a court. According to Section 1(c), if these requirements are satisfied, the foreign proceedings will be recognized as either "Foreign

main proceedings" if they take place in the nation where the debtor conducts their primary business operations or "foreign non-main proceedings' if the debtor has a legitimate presence there. Courts have to give these cases first priority and make a decision as soon as feasible. However, if it turns out that the initial justification for giving recognition was flawed or no longer relevant, it may be changed or revoked.

16. **Section 18:** The FR is required to notify the court of any noteworthy changes following the submission of an application for recognition of foreign proceedings. This involves quickly updating the court on any changes to their own appointment or the status of the recognized foreign proceedings. Furthermore, the foreign representative is required to promptly notify any other bankruptcy procedures involving the same debtor that they learn about in any other country.
17. **Section 19: Provisional Relief Available During Recognition Process**: If immediate action is needed, the court may provide provisional relief prior to making a judgment on the petition for acknowledgment of foreign proceedings. The court may, at the foreign representative's request, take acts including stopping enforcement operations against the debtor's assets or giving the FR authority over the management of assets within South Africa. This is especially important when assets are vulnerable to loss, damage, or depreciation. Additionally, the court may provide some specific forms of relief outlined in related legal provisions. Any orders issued under this provision must comply with Section 17 of the IA, 1936[102] or Section 357 subsections 1 and 4 of the CA, 1973,[103] as may be applicable in the case. If the recognition application is denied, the temporary relief automatically ends unless an extension is granted u/s 21(1)(f). Requests for such relief, however, might be denied by the court if doing so would interfere with the administration of current Foreign main proceedings.
18. **Section 20: Legal Consequences of Recognising FMPs**: The formal recognition of a "foreign main proceeding" in South Africa has a number of direct legal ramifications. All pending or new legal actions pertaining to the debtor's obligations, liabilities, or assets are suspended. During this time, creditors are unable to execute judgments against the

[102]Insolvency Act 24 of 1936 | South African Government, https://www.gov.za/documents/insolvency-act-24-jun-1936-0000 (last visited Mar 30, 2025).
[103]Companies Act 71 of 2008 | South African Government, https://www.gov.za/documents/companies-act (last visited Mar 31, 2025).

debtor's assets. The debtor can no longer manage, mortgage, or transfer their assets. Last but not least, South African insolvency rules apply to the debtor's domestic assets as if a local jurisdiction had ruled them insolvent. This guarantees adaptability in managing international bankruptcy cases while being compliant with South African insolvency laws.If the "foreign representative" or any other impacted party requests it, the court has the power to change or remove these limits. This legal hold, however, does not stop creditors from bringing the appropriate legal action to protect their interests against the debtor. Furthermore, it doesn't prevent someone from presenting claims under local insolvency rules or starting insolvency procedures in South Africa.

19. **Section 21: Court-Granted Relief After Recognizing Foreign Insolvency Proceedings**: According to Section 22(1), the court has the authority to provide remedy that safeguards the debtor's assets and guarantees the protection of creditors' interests when a foreign insolvency action is formally recognized, regardless of whether it is the debtor's main or non-main proceeding. The court may do the following at the foreign representative's request:
    - **Section 21(1)(a):** Put a temporary stop to any legal measures taken against the debtor's property, rights, or obligations, unless "Section 20(1)(a)" has previously been invoked to pause them.
    - **Section 21(1)(b):** Stop any attempts to seize or enforce claims against the debtor's property, unless this has already been addressed under "**Section 20(1)(b)"**.
    - **Section 21(1)(c):** Restrict the debtor from selling, transferring, or encumbering assets unless this restriction is already in place under **Section 20(1)(c)**.
    - **Section 21(1)(d):** Permit the gathering of pertinent financial documents, testimony, and other proof pertaining to the debtor's financial circumstances.
    - **Section 21(1)(e):** Assign the FR or another person chosen by the court to oversee or liquidate the debtor's South African assets.
    - **Section 21(1)(f):** Extend any temporary relief that was previously granted under **Section 19(1)** if needed.

- **Section 21(1)(g):** Provide any additional legal remedies available under South African law to a "trustee", "liquidator", "judicial manager", "curator", or "receiver".
- For cases involving non-main proceedings, **Section 21(3)** ensures that any judicial remedy only applies to properties or information that should legally be handled within the foreign non-main proceeding.
- Finally, in accordance with Section 21(1), the court must specify which South African laws will govern the administration, liquidation, and dissemination of the debtor's properties domestically before awarding relief.

20. **Section 22:** When deciding whether to grant or deny relief under **Section 19 or Section 21**, or when considering modifications or cancellations of relief under **Subsection (3) of this section**, the court must ensure that the rights and interests of all involved parties—including creditors, other stakeholders, and the debtor—are sufficiently protected. Under **Section 22(2)**, the court has the authority to impose conditions on any relief granted under **Section 19 or Section 21** if it deems such conditions necessary. Additionally, Section 22(3) empowers the court to alter or remove relief given under Section 19 or 21 at the bequest of the Foreign Representative (hereinafter "FR"), any party impacted by the awarded relief, or even on its own initiative.
21. **Section 23: Preventing Prejudicial Actions Against Creditors**: According to **Section 25(1)**, once foreign proceedings are officially recognized, the **foreign representative** is granted the legal authority to undertake any legal step for setting aside any option of disposition that can be availed by a **trustee or liquidator** under South African insolvency laws. However, according to **Section 25(2)**, if the recognized proceedings fall under **"foreign non-main proceedings'**, the court must first confirm that the disputed transactions involve assets that, according to **South African law**, should rightfully be managed within the scope of those **foreign non-main proceedings**.
22. **Section 24: Participation of a FR in Local Legal Proceedings**: Once a foreign insolvency proceeding has been officially recognized, the appointed foreign representative is allowed to take part in any legal case involving the debtor, as long as the participation aligns with the legal requirements of the Republic.

23. **Section 25**: In cases involving cross-border insolvency, the court must cooperate as fully as possible with foreign courts and representatives. This cooperation can be facilitated directly or through appointed officials such as a trustee, liquidator, judicial manager, curator, or receiver. Additionally, the court has the authority to establish direct communication with foreign courts or representatives, as well as to seek relevant information or assistance when necessary.
24. **Section 26: Collaboration and Interaction by Insolvency Practitioners with Foreign Entities**: In handling cross-border insolvency matters, trustees, liquidators, judicial managers, curators, and receivers are required to cooperate as extensively as possible with foreign courts and representatives, while remaining under the court's supervision. They are also permitted to engage in direct communication with foreign courts or representatives, provided such interactions align with their duties and are subject to judicial oversight.
25. **Section 27: Modes of Cooperation in CBI**: The cooperation outlined in Sections 25 and 26 can be facilitated through various methods, including appointing an individual or entity to act under court direction, sharing information through means approved by Court, coordinating the management and oversight of the debtor's assets and affairs, approving or implementing agreements that align multiple proceedings, and ensuring coordination of concurrent cases involving the same debtor.
26. **Section 28**: Once Foreign main proceedings have been recognized, insolvency proceedings under the laws of the Republic can only be initiated if the debtor possesses assets within the country. The impact of such proceedings is limited to the debtor's assets located in the Republic and, where necessary for cooperation and coordination under Sections 25, 26, and 27, to any other assets that, according to the Republic's laws, should be managed within those proceedings.
27. **Section 29: Coordinating Domestic and Foreign Insolvency Proceedings**: The court is required to make sure that the procedures are properly coordinated when a debtor is simultaneously participating in both international and domestic proceedings. This comprises:

1) If Local Insolvency Proceedings Are Already Underway When Foreign Proceedings Are Recognized:

   - The Republic's continuing insolvency procedure cannot be hampered by any relief provided under Sections 19 or 21.
   - The automatic stay clauses in Section 20 will not be applicable in order to prevent conflicts if the foreign proceedings are recognized as main proceedings.

2) Managing International Non-Main processes:
   - If relief is given to a FR of non-main proceedings, it must be carefully restricted to assets that should be handled in those international procedures or pertain to information required in them as per Republic law.

Section 30: Coordinating More than One Foreign Insolvency Proceedings: When numerous overseas insolvency processes involve the same debtor, the court must guarantee effective coordination and cooperation as specified in Sections 25, 26, and 27. This comprises:

1) **Aligning Non-Main Proceedings with Main Proceedings**: Any relief given to a FNMP under Section 19 or 21 must be consistent with the main process if a "foreign main proceeding" has previously been recognized.
2) **Modifying Relief When a foreign main proceedingIs Recognized Following a Non-Main Proceeding:** Any relief under Sections 19 or 21 that may already be in place must be evaluated if an FMP is recognized following the recognition of a foreign non-main proceeding or after an application for the recognition of the FNMP has been submitted.The court may modify or revoke it if it conflicts with the newly recognized main proceeding.
3) **Managing Several Non-Main Proceedings**: The court must reevaluate the relief given in earlier instances when further "foreign non-main proceedings' are recognized following the recognition of certain prior foreign non-main procedures. To guarantee seamless coordination between all current proceedings, changes or terminations should be made as needed.

28. **Section 31: Presumed Insolvency Upon Recognition of "Foreign main proceedings"**: Unless proven otherwise, once Foreign main proceedings are recognized, it is automatically assumed that the debtor is insolvent. This presumption applies when initiating insolvency proceedings under the laws of the Republic.
29. **Section 32: Payment Rules in Concurrent Insolvency Proceedings**: Unless other creditors in the same category are receiving an equal or greater proportion of their claims, a creditor cannot receive additional payments for the same claim in the same debtor's insolvency proceedings under Republic law if they have already received partial payment on their claim through insolvency proceedings in another country. This guarantees proportionality and equity in the allocation of debt.

Additionally, to safeguard personal privacy, the Minister has the authority to issue an official notice in the Gazette, granting exemptions for certain categories of former names from being recorded. This exemption applies to names that individuals may have used before reaching adulthood, such as those before legal majority, or names that changed due to adoption, marriage, divorce, or widowhood. The Minister can also define additional circumstances where such name exemptions would be applicable, ensuring that personal privacy is balanced with corporate transparency.

The introduction of the designation system has led to a dual approach in how South Africa handles foreign bankruptcy orders. However, since no countries have been designated yet, representatives from other nations must continue relying on common law, which is shaped by past court rulings and guided by principles of fairness, practicality, and international cooperation.[104]

In South African insolvency law, property includes all assets, whether movable or immovable, as long as they are located within the country. However, when assets are held in foreign jurisdictions, private international law principles come into play. These rules determine how insolvency representatives can manage overseas property, whether they are South African representatives seeking recognition abroad or foreign representatives requesting recognition in South Africa.

[104]Olivier, *supra* note 97.

A key legal precedent, ***Ward v Smit: In re Gurr v Zambia Airways Corp Ltd***, [105] established that if a foreign representative is handling the insolvency of a company and is required to manage assets situated in SA—whether land, buildings, or movable goods—they must first obtain official recognition from a South African court. Without this recognition, they do not have the legal authority to manage or claim the company's assets within the country.

A FR is legally permitted to handle the debtor's assets in South Africa after receiving formal recognition from a South African court. This includes managing, liquidating, or protecting such assets in addition to participating in any estate-related legal actions. To guarantee the protection of local creditors' rights, South African courts might, nonetheless, impose restrictions. These requirements might include financial protections or control procedures to stop any unjust treatment of South African debtors. Foreign creditors still have options if the court denies recognition or if the FR does not request it. They have the authority to unilaterally request a company's liquidation or the sequestration of a specific debtor under South African law, provided they meet the necessary legal requirements.[106]

As held in the case of ***Clegg v Priestley***,[107]A foreign representative must apply for recognition and assistance from a local High Court in order to be formally recognized in South Africa. Another party, such as a local creditor, must be notified about the application if granting this recognition might affect their rights in order to guarantee that their interests are taken into account. When determining whether to acknowledge a foreign administrator's control over an insolvent's domestic real estate, SA's courts have complete discretion. Although this discretion is unrestricted, recognition is often given based on the concepts of international cooperation and comity.

In ***Ex parte BZ Stegmann***[108]an idea was reaffirmed by Judge Innes, who said that although the court is not required to acknowledge a foreign judgement, it may do so out of convenience or

[105]Ward and Another v Suit and Others ; In Re: Gurr v Zambia Airways Corporation Ltd (51/1996) [1998] ZASCA 16 (23 March 1998), (1998), https://lawlibrary.org.za/akn/za/judgment/zasca/1998/16/eng@1998-03-23 (last visited Apr 4, 2025).
[106]Olivier, *supra* note 97.
[107]Clegg v Priestley 1985 (3) SA 950 (W) at 954F.
[108]3Ex parte Steyn 1979 2 SA 309 (0)., (1979).

comity. This implies that the court can permit a foreign decision to be implemented in South Africa and, if it thinks it suitable, can help enforce it. In the end, the court has complete discretion over the choice.

The local assets of the debtor are regarded by South African law as though they belonged to an insolvent in SA's jurisdiction, when a foreign representative is recognized in the country. This does not, however, imply that the debtor has been officially deemed insolvent under South African law.[109]

Local courts give South African creditors' protection first priority since South African law is based on the territoriality concept. This implies that administrative expenses and local obligations must be paid off before any assets may be moved abroad. However, if a foreign creditor has a secured claim recognized by South African insolvency law, they can be given priority treatment.[110]

As a result, we can observe that South Africa now handles cross-border bankruptcy using two different strategies. Common law principles must still be used by creditors and representatives from nations that are not formally recognized under the Cross-Border Insolvency Act. On the other hand, the legal arrangements provided by the Act are advantageous to individuals from designated nations. This indicates that rather than using a universal norm in these areas, South Africa has purposefully opted to distinguish amongst countries. With some regard for international collaboration, the territoriality concept serves as the foundation for South Africa's common law approach to cross-border bankruptcy.

Thus we can summarise that the application of the CBI in SA relies heavily on international cooperation. Section 2(1) provides for mutual assistance between South Africa and foreign jurisdictions in handling insolvency matters, both for assistance requested by foreign courts in South Africa and for support South Africa seeks abroad. Section 2(2)(b) further states that the Minister can only designate a country under the Act if that country's legal framework gives adequate recognition to South African insolvency proceedings. This concept of designation implies a kind of informal reciprocity, though not based on formal treaties. International law also plays a role in the implementation of the Act, particularly in light of section 3, which clarifies that the Act must comply with South Africa's treaty obligations under "section 231(4) of the

[109]Clegg v Priestley 1985 (3) SA 950 (W) at 954F, *supra* note 107.
[110]3Ex parte Steyn 1979 2 SA 309 (0)., *supra* note 108.

Constitution". This means that any future international agreement on CBI, such as one with a neighboring state or a broader SADC treaty, would take precedence over the Act to the extent of any inconsistency. However, this hierarchy could become complex if South Africa enters into a treaty based on the UNCITRAL MLCBI, since the Act was specifically designed to give effect to it. In that case, the Act might actually serve as the means of incorporating the treaty into domestic law and should not be viewed as subordinate to it. Section 8 of the Act helps reconcile this by mandating that the Act be interpreted in light of its international roots and with an emphasis on consistency and good faith. Although Parliament must approve the designation of foreign states, the Act doesn't require this designation to be grounded in an international agreement. So while designated states' laws and procedures will be acknowledged by South African courts, there's no formal guarantee that South Africa will receive similar treatment in return unless a treaty exists.[111]

[111]Olivier, *supra* note 97.

China:

Cross-border bankruptcies often spiral into chaos due to the absence of unified international regulations. Without a consistent framework, countries end up handling parts of the process independently, leading to delays, inefficiencies, and unfair asset distribution. One expert described it as a logistical nightmare [112]—no single nation has full authority over the company, its property, or its creditors, making coordination nearly impossible.

Legal experts have explored two main strategies for handling international bankruptcy cases: territorialism and universalism. Territorialism, rooted in the principle of national sovereignty, has traditionally been the default approach. In contrast, universalism is seen as a more streamlined and effective method, though it's often viewed as politically challenging to implement. To bridge the gap, a middle-ground concept known as modified universalism was introduced. This hybrid model was embraced by the UNCITRAL in its Model Law on "Cross-Border Insolvency".

Brief History of the past:

Prior to the EBL 2006, the laws pertaining to cross-border bankruptcy matters were completely nonexistent. Although it did not address any specific difficulties, the bankruptcy part under the "Civil Procedure Law" may apply to a foreign-related legal person. There were no other rules pertaining to the business that included foreign components. The territoriality concept has historically been used by Chinese courts to handle incoming cross-border bankruptcy cases.

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The "Foshan Intermediate People's Court in Guangdong's Special Economic Zone" rendered a historic ruling known as the "B&T" case, which was the first time a Chinese court has formally acknowledged a foreign bankruptcy judgment. The conflict concerned "Nanhai Pioneer Mould", a "Sino-Italian" joint venture founded in 1993 by "Nassetti Ettore S.p.A.", an Italian partner, and "Nanhai Jili Ceramic Industry", a Chinese business. Another Italian company, B&T, was able to effectively purchase the Italian partner's assets through a court-approved sale after the Milan

[112]Evelyn H. Biery, Jason L. Boland & John D. Cornwell, *A Look at Transnational Insolvencies and Chapter 15 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 47 BOSTON COLLEGE LAW REVIEW (2005), https://bclawreview.bc.edu/articles/1025 (last visited Apr 5, 2025).

court declared it bankrupt under decision No. 62673. The Milan Civil and Penal Court ordered the bankruptcy administrator to give B&T exclusive management of all pertinent assets.
Problems started, nevertheless, when Nassetti signed a share transfer agreement with a Hong Kong business during the bankruptcy procedures. The Hong Kong Company then obtained local authority to join the joint venture as the new foreign partner. After then, B&T petitioned the Chinese court to recognize the Italian bankruptcy ruling and to declare the post-bankruptcy share transfer void as it was the legitimate heir to Nassetti's assets.

At the time, foreign judgment recognition in China fell under the framework of the Civil Procedure Law [113], which allowed foreign applicants to directly approach a Chinese intermediate court with jurisdiction. Upon review, the Foshan court found that recognizing the Italian bankruptcy order would not conflict with China's core legal principles, nor would it harm the country's sovereignty, public order, or interests. Importantly, the court also noted that the request aligned with the "Treaty on Judicial Assistance in Civil Matters between China and Italy"[114]. Thus the court upheld the Milan ruling, making it the first Chinese legal precedent in recognizing a foreign insolvency judgment.

China's legal growth reached a turning point when the Chinese court acknowledged a foreign insolvency ruling for the first time, especially when it comes to CBI issues. Although China doesn't operate under a common law system where judicial precedent is binding, how courts approach these types of cases can still offer insight into future trends. One of the main factors courts consider when recognizing rulings from abroad is whether there is a relevant international treaty in place. In this particular case, such a treaty formed the legal basis for recognition. Ideally, there should be an established treaty or a mutual or reciprocal connection or relationship between the two nations involved. Without that, it becomes much more challenging for Chinese courts to acknowledge foreign judgments, as mutual legal cooperation and respect are key principles in international legal matters for China. Another crucial aspect is how the recognition of a foreign ruling might affect China domestically. If enforcing that judgment were to clash with

[113]国际商事法庭 | CICC - Civil Procedure Law of the People's Republic of China (Revised in 2017), https://cicc.court.gov.cn/html/1/219/199/200/644.html (last visited Apr 6, 2025).
[114]People's Republic of China - Treaty Database, http://treaty.mfa.gov.cn/Treaty/web/detail1.jsp?objid=1531876660241 (last visited Apr 6, 2025).

national interests—such as threatening state sovereignty, endangering public safety, or conflicting with core societal values—the court would likely refuse to accept it.

When the first draft of the new bankruptcy legislation was introduced to the National Congress in 1995, it was not approved because it lacked a strong social insurance framework and accompanying rules. Cross-border bankruptcy was covered in a single, succinct sentence in the law's draft version. It stated that although bankruptcy lawsuits filed by Chinese courts would affect a debtor's assets abroad, those filed in other nations would not affect the debtor's assets in China. This clause's too straightforward language demonstrated a lack of understanding of the many difficulties involved in managing cross-border bankruptcy proceedings, and it obviously adopted a hard territorial posture. [115]

Chinese Corporate CBI Law:

On August 27, 2006, China's "National People's Congress Standing Committee" passed the EBL [116], which got enacted in 2007. This law substituted the earlier corporate bankruptcy legislation that had been in place since 1986. Marking a major advancement in China's legislative structure for insolvency, the updated law is intended to offer greater reassurance to international investors by strengthening protections for their assets. This added layer of security is expected to help China maintain its appeal as a destination for foreign investment.

China's updated bankruptcy legislation was introduced with the goal of streamlining corporate bankruptcy processes, for both debtors and creditors, and preserving stability within the socialist market system. Drawing inspiration from Western legal frameworks, this new Corporate Bankruptcy Law marks a notable advancement in modernizing and strengthening China's approach to insolvency. However, the law's treatment of corporate cross-border insolvency

[115]Kerstin Olbrich & Immanuel Gebhardt, *New Developments in the Reform of Chinese Bankruptcy Law.*, 12 AUSTRALIAN JOURNAL OF CORPORATE LAW 109 (2000), https://search.informit.org/doi/10.3316/agispt.20010452 (last visited Apr 7, 2025).

[116]Enterprise Bankruptcy Law of the People's Republic of China, https://english.www.gov.cn/services/doingbusiness/202102/24/content_WS6035f009c6d0719374af97ad.html (last visited Apr 16, 2025).

remains somewhat unclear, with ambiguous wording that raises questions about how reliably foreign bankruptcy rulings will be recognized and enforced within China. [117]

The issues regarding Corporate CBI in China are dealt with in the "**Law of the People's Republic of China on Enterprise Bankruptcy (2006)" [118]**as mentioned above was officially passed during the "23rd session of the Standing Committee of the 10th National People's Congress on August 27, 2006". The relevant provisions with regard to the same can be discussed hereafter.

Certain provisions in China's EBL address cross-border bankruptcy issues. These clauses address two important topics: first, how Chinese bankruptcy law affects assets held by a debtor outside the nation, and second, how China manages the acceptance of foreign bankruptcy court rulings inside its own boundaries. As for assets outside of China, the law stipulates that if a bankruptcy case is filed in China, it also covers the debtor's overseas property, meaning that those assets are regarded as belonging to the bankruptcy estate in China. As a result, the law makes it quite evident that its provisions might be applied to the debtor's assets that are situated outside of China.

To be more clear on this, **Article 5 of China's EBL**clarifies the country's stance on international insolvency cases. It states that once bankruptcy proceedings are legally started in China, they are considered to apply not just within its borders, but also to any assets the debtor may own abroad. However, under certain circumstances, a Chinese court may accept and implement a foreign court's final decision in a bankruptcy case that impacts a debtor's assets situated in China. The Chinese court must examine the foreign ruling to make sure it complies with international agreements of which China is a party or that reciprocity—the idea of reciprocal recognition— exists between the nations.

Additionally, the ruling must not go against China's core legal principles, harm national sovereignty or public interests, or negatively affect the legal rights of debtors within China. Only

[117]Steven J. Arsenault, *Leaping Over the Great Wall: Examining Cross-Border Insolvency in China under the Chinese Corporate Bankruptcy Law*, 21 IICLR 1 (2011), https://journals.indianapolis.iu.edu/index.php/iiclr/article/view/17633 (last visited Apr 5, 2025).

[118]Enterprise Bankruptcy Law of the People's Republic of China, https://english.www.gov.cn/services/doingbusiness/202102/24/content_WS6035f009c6d0719374af97ad.html (last visited Apr 5, 2025).

if these criteria are met will the Chinese court agree to enforce the foreign judgment. [119] Thus, recognizing the judgements of foreign courts typically involves a two-stage assessment. First, the Chinese court looks into whether there's an existing international treaty or a reciprocal legal understanding with the country in question. The court may decline to recognize the foreign decision if neither is present. Now if such a treaty exists or reciprocity can be shown, the next stage, nevertheless, is to make sure the foreign verdict does not conflict with fundamental Chinese legal principles, especially those that safeguard national sovereignty, the public interest, and the rights of local creditors. Recognition and enforcement won't be taken into consideration unless both conditions are satisfied.[120]

Thus most parts of the EBL lay out clear obligations, such as stating that bankruptcy cases opened in China also cover the debtor's overseas assets. However, when it comes to recognizing decisions made by foreign courts, the law takes a more flexible approach. It doesn't guarantee recognition—instead, it gives Chinese courts the option to acknowledge such rulings if, after careful examination, they find no conflict with China's laws or public interests.[121]

A combination of modified universalism and universalism may be seen in China's EBL. Chinese courts assert jurisdiction over all of the debtor's assets, whether they are situated inside or outside the nation, when a bankruptcy case involving a domestic corporation is filed in China. However, the legislation appears to expect that the principal bankruptcy procedures would occur in the foreign business's home country when the case involves a foreign corporation with assets located in China. In certain circumstances, China may initiate a supplementary or supporting lawsuit at home, but only if upholding the foreign verdict does not violate Chinese legal norms, national security, sovereignty, the public interest, or the rights of Chinese stakeholders. [122]
According to **Article 1**of the legislation, the EBL's main goals are to safeguard the stability of China's socialist market economy, guarantee fair settlement of financial obligations, and defend

[119]Enterprise Bankruptcy Law of the People's Republic of China, ARTICLE 5 (2006), http://www.efmlg.org/Docs/Meeting%2028/Bankruptcy%20Law%202006.pdf.
[120]Bingdao Wang, *Cross-Border Insolvency Law in China and Hong Kong: A Critical Analysis Based on the UNCITRAL Model Law on Cross-Border Insolvency*, Apr., 2018, https://etheses.whiterose.ac.uk/id/eprint/21370/ (last visited Apr 6, 2025).
[121]Enterprise Bankruptcy Law of the People's Republic of China, *supra* note 119.
[122]Arsenault, *supra* note 117.

the legal rights of both creditors and debtors. The EBL is a major improvement in both structure and content when compared to its 1986 predecessor.[123]

As previously noted, the article went through multiple rounds of discussion and revision during the reform of China's bankruptcy law, reflecting the significant political and legal thought that shaped its final version. Given that a key policy goal behind the law is to support the growth of China's socialist market economy[124] and attract foreign investment, it's important to examine the legal foundations embedded in Article 5 to understand whether this single provision can offer a reliable and functional framework for handling CBI cases.

Firstly, the legislation is designed to encompass all of the debtor's assets, whether they are situated inside or outside of China, when a Chinese court starts bankruptcy procedures. The legislation doesn't specify a precise procedure for managing assets overseas, although it seems to use the same broad approach as in domestic situations. This implies that all of the debtor's assets, both domestically and abroad, are regarded as part of the bankruptcy estate and are distributed in accordance with Chinese law when a bankruptcy application is approved.

Furthermore, until the court-appointed administrator has control of the assets, any legal actions against the debtor's assets must be stopped, and any existing litigation or arbitration processes involving the debtor must be put on hold. Additionally, it suggests that after the case has been accepted, any payments made by the debtor to specific creditors using foreign assets will probably be deemed illegitimate.[125] China's approach to applying its bankruptcy laws beyond its borders highlights the principle of universalism in handling international insolvency cases. A comparable approach is also evident in the way the United States addresses cross-border bankruptcy matters through its legal framework.

The latter portion of "**Article 5"** elaborates on the concept of universalism by explaining that Chinese courts have the power to examine and potentially uphold bankruptcy decisions made in

[123]Wang, *supra* note 120.
[124]Hu Jingtao, *Law of the People's Republic of China on Enterprise Bankruptcy (2006)*.
[125]Enterprise Bankruptcy Law of the People's Republic of China, *Article 16*(2006), http://www.efmlg.org/Docs/Meeting%2028/Bankruptcy%20Law%202006.pdf.

other countries. This review process involves two distinct layers of assessment, and approval is only granted if both conditions are fully met.[126]

This review's initial phase focuses on determining if China and the foreign nation in question have an existing international treaty or a reciprocal agreement. However, the phrase "international treaties" mostly refers to bilateral agreements pertaining to civil and commercial legal problems, since China has not ratified any international accords that particularly handle CBI matters or judicial cooperation.

Reciprocity is also typically built into those bilateral arrangements. As a result, if no such agreement exists, gaining recognition for a foreign bankruptcy decision in China becomes highly unlikely. Once it's established that a treaty exists or mutual recognition is possible between the two countries, the process moves to the next phase. At this point, the Chinese courts must evaluate whether accepting and enforcing the foreign bankruptcy ruling would conflict with core elements of China's legal framework—such as protecting national sovereignty, upholding public interest, and safeguarding the rights of domestic creditors. [127]

Analysis of the application of Article 5:

To truly get to the heart of what Article 5 means in practice, we can consider two important cases. When we talk about inbound cases, one of the most significant moments was the "***Taizinai"***[128]case. It was the first time a Chinese company faced a bankruptcy ruling from a foreign court. The way things unfolded was intense and caught a lot of media attention, leading to a wave of conversations about how Article 5 should actually be applied under the updated Enterprise Bankruptcy Law. Also the experience of "***Zhejiang Topoint Photovoltaic Co. Ltd***." [129]is worth highlighting. For the first time, Marking a significant breakthrough, their

[126]S. Arsenault, *Leaping Over the Great Wall: Examining Cross-Border Insolvency in China under the Chinese Corporate Bankruptcy Law*, INDIANA INTERNATIONAL AND COMPARATIVE LAW REVIEW (2011), https://www.semanticscholar.org/paper/Leaping-Over-the-Great-Wall%3A-Examining-Cross-Border-Arsenault/0255f777994b35c898ee56b0a9a5cbbfbf8044fc (last visited Apr 7, 2025).

[127]Qingxiu Bu, *China's Enterprise Bankruptcy Law (EBL 2006): Cross-Border Perspectives*, 18 INTERNATIONAL INSOLVENCY REVIEW 187 (2009).

[128]Uncertainties in Practice - Cross-Border Insolvency under the EBL 2006, https://1library.net/article/uncertainties-practice-cross-border-insolvency-ebl.qmv1798q (last visited Apr 8, 2025).

[129]Zhejiang Topoint Photovoltaic Co., Ltd. v. Chen (In re Zhejiang Topoint Photovoltaic Co., Ltd.), 651 B.R. 477 | Bankr. D.N.J., Judgment, Law, casemine.com, HTTPS://WWW.CASEMINE.COM, https://www.casemine.com/judgement/us/6455d8a39e2b825d51b7b5ae (last visited Apr 8, 2025).

restructuring process, built around the "UNCITRAL "Model Law"" framework, received formal recognition from the U.S. bankruptcy courts for the very first time. It was the first time something like this had happened, marking a major milestone for cross-border cooperation in insolvency matters.[130]

In 2006, the Hunan Province, China-based dairy producer Taizinai Group garnered significant worldwide attention. In that year, three significant international investors—"Morgan Stanley", "Goldman Sachs", and "Actis Capital"—invested "$73 million" in exchange for a "31.4%" share in the company as part of a growth and restructuring initiative. To take advantage of more favorable tax policies, the company shifted its ownership structure to a holding entity set up in the Cayman Islands. As part of its ambitious expansion, Taizinai also secured an additional loan from Citigroup. But things took a turn in 2008, when the global financial crisis hit, compounded by a major safety scandal affecting China's dairy industry. The company quickly found itself struggling financially. When Taizinai failed to meet its financial performance goals, a clause in the earlier agreement between company founder Li Tuchun and the investors kicked in— triggering a change in ownership. Li handed over control to the foreign investors under a pre- arranged valuation adjustment mechanism. Because Taizinai was a major employer in the region, its financial troubles left many local workers unpaid, prompting intervention from the Hunan provincial government. Authorities stepped in, negotiated with the investors, and ultimately contributed close to 100 million RMB to help settle debts with some of the creditors of the company. In the end, Li regained control of the company.[131]

Although the immediate crisis had been temporarily managed with help from the local authorities, Taizinai still found itself unable to repay the loan owed to Citigroup. As a result, Citigroup took legal action in the "Cayman Islands", where the holding company was incorporated, and in 2010, secured a court order for liquidation. A Hong Kong-based accounting firm was also designated by the court to serve as the company's interim liquidator and manage its assets in China. However, Taizinai's leadership did not accept the decision made by the Cayman court, arguing that the ruling held no legal weight within China's jurisdiction. Faced with this legal and diplomatic impasse, the local government once again stepped in to mediate. A

[130]Bingdao Wang, *Cross-Border Insolvency Law in China and Hong Kong: A Critical Analysis Based on the UNCITRAL Model Law on Cross-Border Insolvency*.

[131]Uncertainties in Practice - Cross-Border Insolvency under the EBL 2006, https://1library.net/article/uncertainties-practice-cross-border-insolvency-ebl.qmv1798q (last visited Apr 8, 2025).

compromise was reached between the Chinese court and the appointed liquidator, allowing local proceedings to begin for restructuring the company. By 2011, progress had been made. Two businesses, including a sizable state-owned dairy company, entered into agreements with the court-appointed administrator for the reorganization. These businesses consented to assume control of Taizinai and lead it through a process of restructuring that included paying off its outstanding debts. [132]

One of the most striking aspects of this case was the active role taken by the local government throughout the rescue effort. In China, both central and local authorities have a long-standing practice of stepping in during bankruptcy situations[133] and this case was no exception. The government not only injected a substantial amount of funding to help settle debts owed to foreign creditors, but also took the lead in negotiations with both those creditors and the appointed liquidator.

China's updated bankruptcy legislation clearly outlines that maintaining the stability of the socialist market economy justifies such intervention.[134] Because of this legal framework, it's not surprising that government participation remains a key factor in how bankruptcy cases, whether domestic or cross-border, are handled under the 2006 EBL.

"Zhejiang Topoint Photovoltaic Co. Ltd." is another example. The company was headquartered in Haining, Zhejiang Province, and was a significant participant in the solar and photovoltaic energy industry. The sector was burdened by persistent issues in the global economy in 2013, which resulted in financial difficulties for the company. The company's circumstances deteriorated when it was unable to pay back a debt of almost "£11 million" to a nearby "Rural Credit Cooperative". Nevertheless, the Chinese government introduced new regulations later that year with the goal of reviving the solar energy industry, improving the outlook for companies operating in the space. Given these improved prospects, and recognizing that a restructuring could be more beneficial than liquidation, the Credit Cooperative filed a

[132] *Id.*
[133] Corporate rescue in Asia - trends and challenges | Semantic Scholar, https://www.semanticscholar.org/paper/Corporate-rescue-in-Asia-trends-and-challenges-Godwin/85d858e0f6bc139662677d1fa7e372d7d048c327 (last visited Apr 8, 2025).
[134] Enterprise Bankruptcy Law of the People's Republic of China, https://english.www.gov.cn/services/doingbusiness/202102/24/content_WS6035f009c6d0719374af97ad.html (last visited Apr 5, 2025).

reorganisation request with the court. The local court reviewed the case, found that the firm did indeed satisfy the requirements for bankruptcy, and ruled that restructuring would best serve the interests of the creditors. Thus, the case was officially accepted. As the case progressed, the court learned that the business had significant assets in the United States, mostly solar panels kept in a New Jersey warehouse, valued at around £15 million. A request to recognize the Chinese case as a "foreign main proceeding" under Chapter 15 of the "U.S. Bankruptcy Code" was made to a U.S. bankruptcy court in 2014 by the administrator assigned under the Chinese bankruptcy proceeding. By August, the court granted this recognition, determining that the Chinese process satisfied the criteria under section 1517. Following this, and based on sections 1519 and 1521, any legal actions targeting the company's U.S.-based assets were halted or paused. [135]

This case thus holds special importance in China's bankruptcy history, as it marked the first time a U.S. court formally accepted and acknowledged a Chinese reorganisation case. Given the deepening trade ties between China and the United States—and the rise in related commercial and insolvency disputes—the case set a legal precedent that could benefit other Chinese firms navigating the U.S. legal system in future cross-border matters. The Topoint case opened the door for courts in China to potentially apply the principle of reciprocity when considering foreign bankruptcy proceedings. The case also served as an eye-opener for Chinese legal professionals, highlighting how vital cross-border insolvency frameworks are in protecting international business interests. [136]

Recent Developments and Conclusion:

Article 5 of the EBL now serves as the primary legal basis for resolving cross-border bankruptcy matters in mainland China. The concept of reciprocity serves as the primary guideline for decisions pertaining to the validation of insolvency judgements of foreign courts in actual court procedures.

[135]Zhejiang Topoint Photovoltaic Co., Ltd. v. Chen (In re Zhejiang Topoint Photovoltaic Co., Ltd.) | 651 B.R. 477 | Bankr. D.N.J. | Judgment | Law | CaseMine, https://www.casemine.com/judgement/us/6455d8a39e2b825d51b7b5ae (last visited Apr 8, 2025).
[136]Cross-Border Insolvency Law in China and Hong Kong: A Critical Analysis based on the UNCITRAL Model Law on Cross-Border Insolvency - White Rose eTheses Online, https://etheses.whiterose.ac.uk/id/eprint/21370/ (last visited Apr 8, 2025).

This principle requires Chinese courts to assess whether the foreign jurisdiction either has an established reciprocal arrangement with China, or if there is a reasonable legal basis to presume such reciprocity exists.[137]

Between 1994 and 2018, Chinese courts dealt with 30 cases where parties requested recognition of judgments made by courts outside of China. According to the research, this list is the most complete one so far when it comes to this specific legal topic in China. Among these, four were related to bankruptcy cases from foreign countries—one from Italy, one from Australia, one from an African country (Chad), one from the United States, and several others from European nations like France, Germany, Russia, and the UK. The fact that these requests came from such a varying set of countries shows just how deeply China is woven into the global economy. Interestingly, many of these requests came from countries that are also some of China's biggest trading partners, including the US, France, Germany, South Korea, Japan, and Hong Kong. When you break it down, France tops the list with five judgments, followed by Germany, South Korea, and the U.S., each with three. These numbers aren't just statistics—they reflect the strong economic ties and frequent interactions China has with these regions. If we look at how things have changed over time, the growth is clear. In the entire decade of the 1990s, there was just one such case. But that number jumped to nine in the 2000s, and by the 2010s (up through 2018), it shot up to twenty. That steady rise lines up with China's growing involvement in international business and law, and it's a fair bet that these numbers will keep rising as that global role expands. Even though not every year during this period saw new cases, the trend in more recent years shows courts may be warming up to the idea of recognizing foreign judgments. Taking 2018, for example: all three cases submitted that year were approved. That's a 100% success rate. In 2015, half of the applications were accepted. In 2010, however, there was just one case, and it was rejected. The numbers may be small, but they suggest a gradual shift in attitude— especially from around 2015 onward. More and more, Chinese courts appear open to cooperating with foreign judicial systems. [138] The absence of universally binding rules for handling cross- border bankruptcies has led to a fragmented and often inefficient global insolvency landscape. To counter this, several nations—most notably the United States—have implemented insolvency

[137]IIRR_2024-25_ZhongLun.pdf, https://www.capital-markets-intelligence.com/wp-content/uploads/2024/06/IIRR_2024-25_ZhongLun.pdf (last visited Apr 8, 2025).
[138]Zinian Zhang, *Globalized Cross-Border Insolvency Law: The Roles Played by China*, 23 EUR BUS ORG LAW REV 735 (2022), https://doi.org/10.1007/s40804-021-00222-2 (last visited Apr 8, 2025).

frameworks inspired by the "UNCITRAL "Model Law"", aiming to improve coordination and streamline international proceedings. China's recently updatedEBL [139], although not directly modeled on the UNCITRAL framework, does reflect modern principles aligned with the idea of modified universalism. To strengthen its effectiveness and promote investor confidence, particularly among foreign stakeholders, it would be beneficial for China to refine the language in Article 5 and explicitly incorporate provisions that promote international cooperation in insolvency cases.[140] To address the challenges, a number of policy changes can be proposed. First and foremost, China should eliminate the outdated requirement for treaties or reciprocal arrangements when considering foreign bankruptcy recognition requests. This change would align China more closely with prevailing international norms in insolvency law. Secondly, to counteract local bias and ensure consistent handling of such matters, it's recommended that cross-border cases be centralized in the high people's courts at the provincial level, where a smaller, more specialized group of judges can be trained. Lastly, international actors such as the EU and the US should continue using platforms like the WTO and the G20 to diplomatically push for deeper legal reforms in China.[141]

[139]Enterprise Bankruptcy Law of the People's Republic of China, https://english.www.gov.cn/services/doingbusiness/202102/24/content_WS6035f009c6d0719374af97ad.html (last visited Apr 5, 2025).
[140]Arsenault, *supra* note 126.
[141]Zhang, *supra* note 138.

Brazil:

At present Brazil ranks among the top five countries in the world in terms of both population and landmass.[142] With such scale, it's quite natural that numerous major multinational corporations have operations, assets, or subsidiaries there. At the same time, Brazil has produced its own powerful multinational firms, each having worth of billions. With so many global players connected to the country, numerous legal disputes stretch across borders. Yet, Brazil's legal system has often struggled to effectively handle these kinds of international issues. One of the clearest examples of this gap is how the country deals with CBI cases. In the early 2000s, Brazil's efforts to modernize its bankruptcy laws were heavily influenced by a broader global push led by major powers like the World Bank, the IMF, and UNCITRAL. These entities advocated for countries to align with international standards, particularly through the adoption of the UNCITRAL MLCBI. Yet, when the time came for Brazil to update its own legislation, the movement lost momentum. The reform ended up excluding not only the Model Law itself but also any serious consideration of cross-border issues in insolvency. [143]

- Although the topic has gained widespread attention internationally, it continues to receive very little focus within Brazil's academic and legal communities. In fact, cross-border insolvency has rarely sparked interest among Brazilian legal scholars, even throughout the 20th century. When a new corporate bankruptcy law was passed in 2005[144], it still didn't stir meaningful discussion about how Brazil handles insolvency cases with international dimensions.[145]

This ongoing neglect has left Brazil with a legislative skeleton for CBI that is inconsistent and outdated. Legal practitioners often find themselves navigating through a confusing patchwork of older laws—some of which have already been repealed or are no longer fully applicable. On top

[142]Brazil, THE WORLD FACTBOOK (2025), https://www.cia.gov/the-world-factbook/countries/brazil/ (last visited Apr 11, 2025).
[143]Campana Filho & Paulo Fernando, *The Legal Framework for Cross-Border Insolvency in Brazil*, (2009), https://papers.ssrn.com/abstract=1436535 (last visited Apr 11, 2025).
[144]Law No. 11,101, https://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2005/Lei/L11101.htm (last visited Apr 11, 2025).
[145]Thomas Benes Felsberg, Paulo Fernando Campana Filho & Thiago Dias Costa, *Brazil (The Restructuring of Corporate Groups: A Global Analysis of Substantive, Procedural and Synthetic Group Procedures)*, (2022), https://papers.ssrn.com/abstract=4176294 (last visited Apr 11, 2025).

of that, there's a notable lack of judicial decisions to serve as solid references, leaving courts and lawyers to tackle international insolvency issues on a case-wise basis, often without clear guidance. [146]

Brazil's National Insolvency System:

Before diving into Brazil's legal framework for handling CBI issues, it's helpful to first understand how the country deals with insolvency nationally. Different countries structure their insolvency systems in unique ways, often reflecting local legal traditions and economic priorities. Because of this variation, laying out the fundamentals of Brazil's approach provides valuable context.[147]

Brazil's legal heritage stems from Roman law, and its commercial regulations are influenced by the 19th-century "French Commercial Code".[148] One key feature of this tradition is the formal separation between business operators and those not involved in commercial activity. Over time, Brazilian legal scholars developed the idea of *empresa*—or business enterprise—as a central concept. This idea is now used to distinguish between business professionals and others when it comes to insolvency treatment.

As a result, there are distinct legal procedures depending on whether the individual or entity is engaged in business. Despite this division, both tracks share a common feature that is Brazil takes a procedural view of insolvency, focusing on the formal legal process involved rather than adopting a purely economic or commercial approach.[149]

A. **Consumer Insolvency in Brazil:**

When someone who is not engaged in commercial activities—such as a private individual or a nonprofit group—faces insolvency, their case is handled through civil insolvency proceedings. This process is essentially a liquidation, where the person's assets are collected and divided among creditors. It is governed by Brazil's 1973 CPC (*Código de*

[146]Filho and Fernando, *supra* note 143.
[147]Campana Filho & Paulo Fernando, *The Legal Framework for Cross-Border Insolvency in Brazil*, (2009), https://papers.ssrn.com/abstract=1436535 (last visited Mar 23, 2025).
[148]Bergeron Louis, *Le Code de commerce*, FRANCEARCHIVES, https://francearchives.gouv.fr/fr/pages_histoire/39046 (last visited Apr 11, 2025).
[149]FÁBIO KONDER COMPARATO, ASPECTOS JURÍDICOS DA MACRO-EMPRÊSA (1970).

Processo Civil), [150] which does not offer any kind of debt restructuring or repayment plan for individual consumers.

Unlike several European countries, particularly France, Brazil hasn't introduced laws aimed at helping consumers manage or reorganize personal debt. [151] Many legal scholars in Brazil have argued for a complete reform of the current consumer insolvency system, suggesting that the French model for addressing excessive personal debt could be a helpful guide.

Under the current rules, most of a debtor's possessions—except for those necessary to ensure basic living conditions for themselves and their family, like their home—are subject to seizure and sale in a public auction.[152] The money raised is then used to repay creditors. However, the individual isn't immediately released from remaining debts. They must wait five years after the assets have been distributed and for the case to be closed before receiving a discharge. During this time, if the debtor acquires new property, it can also be sold to repay any outstanding debts. [153]

Also there is a possibility for an out-of-court resolution that is if the debtor and all creditors unanimously agree, they can reach a settlement that outlines alternative payment terms. Once this agreement is approved by the court, it becomes legally binding and the civil insolvency case can be thereafter closed. [154]

B. Corporate Insolvency: Historical Background and Legal Evolution in Brazil:

In Brazil, businesses such as corporations aren't governed by general insolvency rules; instead, they follow a distinct legal pathway laid out by a specific statute. This is found in the 2005 "Bankruptcy and Corporate Recovery Law (*Lei de Recuperação de Empresas e Falências*)" ,[155] which replaced the much-criticized and outdated legislation from 1945.

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[150]Código de Processo Civil de 1973, WIKIPÉDIA, A ENCICLOPÉDIA LIVRE (2021), https://pt.wikipedia.org/w/index.php?title=C%C3%B3digo_de_Processo_Civil_de_1973&oldid=62145005 (last visited Apr 11, 2025).

[151]C. Marques, *Sugestões Para Uma Lei Sobre o Tratamento Do Superendividamento de Pessoas Físicas Em Contratos de Crédito Ao Consumo: Proposições Com Base Em Pesquisa Empírica de 100 Casos No Rio Grande Do Sul* (2005), https://www.semanticscholar.org/paper/Sugest%C3%B5es-para-uma-lei-sobre-o-tratamento-do-de-em-Marques/24bd85c7e7095a0549752ece6fe54942ea19d332 (last visited Apr 11, 2025).

[152]Código de Processo Civil de 1973, *supra* note 150.

[153]*Id.*

[154]*Id.*

[155]Astéria Internet Solutions, *Entenda como funciona a Lei de Recuperação de Empresas e Falências*, https://www.levysalomao.com.br/publicacoes/artigo/entenda-como-funciona-a-lei-de-recuperacao-de-empresas-e-falencias (last visited Apr 11, 2025).

By the early 2000s, that earlier law was nearing its 60th anniversary and was widely seen as ineffective. One of its biggest flaws was that it often failed to recover debts efficiently and led to the unnecessary breakdown of companies that might have otherwise been saved. The goal of the legislative overhaul was to make the process more efficient—both in helping creditors to get repaid and in preserving the economic value of viable companies.

Before this new law came into force, the Brazilian legal system recognized two primary procedures for companies facing financial collapse: liquidation (essentially closing and selling off the business) and a process known as "composition." Composition had been part of Brazilian Commercial Code [156] since the 1850s, introduced under the name *concordata*.[157] The idea behind it dates back centuries and was particularly popular in medieval European trade centers, especially in Italy. It was a way for merchants and creditors to strike a deal where debts could be settled for less than originally owed, helping both sides avoid the harsh consequences of bankruptcy.[158]

This approach to resolving debt was widespread and eventually influenced legal codes across Europe, including the FCC of 1808. [159] When Brazil adopted similar legislation, the principle was that if most unsecured creditors agreed to revised payment terms, then all of them—including any dissenters—would have to accept the outcome.

Things changed dramatically in 1945 when Brazil introduced a new legal framework. The reformed composition process removed negotiation from the equation. Instead, if a company met specific legal conditions, courts would automatically grant them more lenient repayment terms—like extended deadlines or reduced amounts—regardless of what the creditors thought. The company wasn't allowed to offer creative or customized payment plans; everything had to conform to strict legal templates. And judges didn't

[156]Hanna Sonkajärvi, *The Application of the Brazilian Commercial Code between 1850 and 1860: An Analysis of the Evidence of a Case of Negligent Bankruptcy, in: Revista Tempo, 2015 (= Ahead of Print Epub July 21, 2015. Orig. in Portuguese: Engl. Translation Provided by the Journal)*, TEMPO (2015), https://www.academia.edu/14795770/The_application_of_the_Brazilian_Commercial_Code_between_1850_and_1860_an_analysis_of_the_evidence_of_a_case_of_negligent_bankruptcy_in_Revista_Tempo_2015_ahead_of_print_Epub_July_21_2015_Orig_in_Portuguese_Engl_translation_provided_by_the_Journal_ (last visited Apr 11, 2025).

[157]Concordat - What is it, concept and more | Financial Terms, https://maisretorno.com/portal/termos/c/concordata (last visited Apr 11, 2025).

[158]Filho and Fernando, *supra* note 143.

[159]Code de commerce ... by France | Open Library, https://openlibrary.org/books/OL20449995M/Code_de_commerce_... (last visited Apr 11, 2025).

have the power to evaluate the fairness of those terms—they could only check whether the debtor had ticked the right procedural boxes. [160]

This meant that creditors had very little influence. Their only way to challenge a composition plan was to argue that some formal requirement hadn't been met; they couldn't object based on the fairness or feasibility of the deal. That is why many came to view this process as a kind of legal gift handed to struggling companies, often at the expense of those they owed money to.[161]

Because creditors were effectively sidelined, many lost interest in participating at all. This vacuum created an opportunity for less honest debtors to exploit the system. In some cases, minority creditors would demand side payments just to approve a plan. By removing creditor oversight, the law unintentionally made room for manipulation and abuse. This is the reason why, critics pointed out that giving courts so much control while limiting creditor involvement weakened the integrity of the entire process.

Even though the previous insolvency framework was widely criticized for its inefficiency—especially because both liquidation and composition processes resulted in poor creditor recoveries—the journey to legal reform was long and complicated. The first version of the new legislation was introduced to Congress [162] in 1993, but it underwent significant revisions over the years. Eventually, in 2005, Brazil enacted a new bankruptcy law [163] that drew considerable influence from both French insolvency practices and the American Bankruptcy Code.[164]

With this new legal structure, traditional composition procedures were eliminated, making room for a more modern and structured reorganization process. The reorganization model is comparable in some ways to the Chapter 11 system in the United States.[165] The updated law introduced a court-supervised recovery mechanism,

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[160]Filho and Fernando, *supra* note 147.
[161]Filho and Fernando, *supra* note 143.
[162]Brazilian National Congress - Wikipedia, https://en.wikipedia.org/wiki/Brazilian_National_Congress (last visited Apr 11, 2025).
[163]The New Brazilian Bankruptcy Law, http://chasecambria.com/site/journal/article.php?id=160 (last visited Apr 11, 2025).
[164]U.S. Code: Title 11 — BANKRUPTCY | U.S. Code | US Law | LII / Legal Information Institute, https://www.law.cornell.edu/uscode/text/11 (last visited Apr 11, 2025)."
[165]"Chapter 11 - Bankruptcy Basics, https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics (last visited Apr 11, 2025).

streamlined options for pre-arranged recovery plans, and even included a simplified pathway tailored specifically for small businesses.[166]

Under this law, only the company itself can initiate the recovery process—creditors are not allowed to file such petitions. Once the proceeding begins, there is a 180-day freeze on debt collection efforts, giving the company breathing room to propose a repayment plan while staying in control of its operations. The proposed plan must be voted on by creditors, organized into different groups based on the nature of their claims. If the majority in each class agrees to the plan and the court confirms it, the business can continue operating, and all creditors—even those who voted against it—are bound by its terms. On the other hand, if the plan is rejected, the company faces liquidation, unless the court steps in to enforce the plan over the objections of one dissenting class through a process known as "cram down."[167]

In terms of liquidation—referred to in Brazil as *falência*, a term that comes from the French word *faillite*[168]—the focus is on gathering and distributing the debtor's assets among creditors in accordance with claim priorities and proportionality. The 2005 reform significantly improved this process. Now, a court-appointed trustee oversees the company's affairs and is expected to preserve its value, rather than shutting it down immediately, as was common under the old regime. Discharge of debts isn't granted automatically. It typically happens five years after the liquidation ends, but that timeline can double to ten years if the debtor has been convicted of fraudulent or criminal behavior related to the bankruptcy. Alternatively, if the debtor manages to repay at least 50% of unsecured debts, discharge can be granted earlier.[169]

One of the key priorities, no matter whatever the situation be, is ensuring that the business's operational value is preserved. The law actually supported this goal by enabling the sale of the business itself, or even a specific division or operational unit, if liquidation becomes unavoidable. In such cases, whoever buys the business assets isn't

[166]The Brazilian bankruptcy law experience, https://www.academia.edu/62060564/The_Brazilian_bankruptcy_law_experience (last visited Apr 11, 2025).
[167]"Filho and Fernando, *supra* note 216.
[168]falência - Tradução em francês – Linguee, https://www.linguee.pt/portugues-frances/traducao/fal%C3%AAncia.html (last visited Apr 11, 2025).
[169]The New Brazilian Bankruptcy Law, *supra* note 163.

responsible for the company's old debts, since the money from the sale goes toward settling whatever is owed to creditors.[170]

But, the law doesn't apply equally across the board. For example, secured claims backed by collateral—like mortgages or pledges—are grouped together during a restructuring process, and the rules of the majority in that group dictate the outcome. These different types of collateral-backed creditors are treated as one unified class, despite any differences in their individual claims. But there are special categories of secured agreements that work a bit differently. Some financial arrangements, especially those where ownership is transferred on paper but the asset stays with the debtor until the debt is paid off, are handled separately. These deals give lenders extra protection, allowing them to recover assets even when the company is going through reorganization. Banks frequently use this setup to secure repayment, keeping legal ownership until the borrower settles the debt entirely. These types of arrangements operate outside the reorganization process and can be enforced independently. Taxes also fall outside the scope of restructuring efforts—they're not included in the repayment plans. On top of that, certain claims, like those tied to advance payments on foreign exchange contracts, are exempt from both restructuring and liquidation procedures and can be enforced no matter what's happening with the company overall.[171]

Despite all these updates, the 2005 reform still left one major issue unaddressed: how to handle insolvency that crosses national borders. The law failed to incorporate modern frameworks like the UNCITRAL Model Law on "Cross-Border Insolvency",[172] which had already been adopted internationally in 1997. [173] It also missed the mark on addressing complexities introduced by U.S. and European cross-border regulations. This lack of attention has left Brazil with a fragmented and outdated legal structure in this area.

[170]Filho and Fernando, *supra* note 147.
[171]*Id.*
[172]Vedhas Law Journal, *UNCITRAL Model Law: A Solution for Cross-Border Insolvency*, VEDHAS (Sep. 29, 2024), https://vedhaslawjournal.com/2024/09/29/puru-purohit/ (last visited Mar 25, 2025).
[173]UNCITRAL Model Law on Cross-Border Insolvency (1997) | United Nations Commission On International Trade Law, https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency (last visited Apr 11, 2025).

Brazil's bankruptcy legislation introduced in 2005: [174]

Brazil may have had the perfect opportunity to address the rising worldwide issue of CBI when it established a new bankruptcy law in 2005.

Meanwhile, Europe had already been implementing its own insolvency regulation for more than three years, at the time this Act came into force. It is to be noted here that International cooperation in insolvency matters was clearly gaining momentum at that time. Despite this global shift, Brazil's updated bankruptcy legislation did not touch on international cases. Instead, it focused solely on defining which courts within the country had the authority to handle insolvency matters, overlooking the broader international context altogether. [175]

The 2005 Bankruptcy Law in Brazil, much like the one it replaced, continues to require that insolvency cases—whether for liquidation or restructuring—start in the court under whose jurisdiction the debtor's main operations are based. In reality, this means the court overseeing the debtor's principal assets has the authority to handle the case. While this might work within Brazil's borders, the law doesn't provide specific rules for handling cross-border or international jurisdiction, leaving a grey area when foreign elements are involved.[176]

There's also no guidance on how foreign creditors should be treated. While there are general rules about debts in foreign currencies and some technical requirements for international creditors—like needing to post a financial guarantee before filing a petition etc.. In effect, Brazilian law makes no distinction between local and foreign creditors, thus offering no extra safeguards or recognition for international parties. They must submit their claims directly to a Brazilian court, and those claims will be converted into Brazilian currency according to the law's formula.[177]

[174]Filho and Fernando, *supra* note 147.
[175]Jay Lawrence Westbrook, *A Global Solution to Multinational Default*, (2001), https://papers.ssrn.com/abstract=259960 (last visited Apr 12, 2025)."
[176]"Filho and Fernando, *supra* note 143.
[177]The Brazilian bankruptcy law experience, *supra* note 166.

All in all, the 2005 update didn't bring any real progress when it came to global insolvency issues. It repeated the shortcomings of the previous law and missed a key opportunity to modernize Brazil's approach to international bankruptcy matters.

Recent changes to Brazil's bankruptcy legislation introduced in 2005:

Following years of discussion and legal back-and-forth, Brazil has finally updated its bankruptcy laws to bring them in line with more modern standards. The revised framework introduces several new measures aimed at helping financially struggling businesses stay afloat. Among the key changes are clearer guidelines for "debtor-in-possession (DIP)" financing and a mechanism that gives creditors the power to put forward their own recovery plans if the one offered by the debtor falls short. This type of financial support is designed to keep the business running while it works on getting back on its feet. [178] On the international side, Brazil has taken a significant step by officially adopting the MLCBI, improving how it handles insolvency cases that stretch across borders.[179]

Before Brazil adopted it, the MLCBI had already been applied in practice across 48 countries, making it a well-established tool for professionals dealing with "cross-border insolvency". One of its key features is helping determine which country's courts should take the lead in handling an international insolvency case. It does this by locating the COMI, and treating the case filed in that country as the "foreign main proceeding"[180]. Under Brazil's new approach, if a bankruptcy case is started in a different country—one where the debtor has ongoing business operations or assets but not their main base—it's classified as a "foreign non-main proceeding."[181]

To gain recognition and cooperation from Brazilian courts in CBI matters, a foreign insolvency representative must first go through a process called "recognition," as outlined in the "Model

[178]Debtor-in-Possession (DIP) Financing: Definition and Types, INVESTOPEDIA, https://www.investopedia.com/terms/d/debtorinpossessionfinancing.asp (last visited Apr 12, 2025).
[179]Jocelyn Hurtado, *Cross-Border Insolvency In Brazil: The UNCITRAL Model Law Dances to A Samba Beat • Sequor Law*, SEQUOR LAW (2021), https://www.sequorlaw.com/news-release/cross-border-insolvency-in-brazil-the-uncitral-model-law-dances-to-a-samba-beat (last visited Apr 12, 2025).
[180]Foreign Main Proceeding: Inside the Foreign Main Proceeding: Chapter 15 s Approach to International Bankruptcy, FASTERCAPITAL, https://fastercapital.com/content/Foreign-Main-Proceeding--Inside-the-Foreign-Main-Proceeding--Chapter-15-s-Approach-to-International-Bankruptcy.html (last visited Apr 12, 2025).
[181]Foreign non-main proceedings Definition | Legal Glossary | LexisNexis, https://www.lexisnexis.co.uk/legal/glossary/foreign-non-main-proceedings (last visited Apr 12, 2025).

Law".[182] This involves filing a request in the court located in the area having the "main establishment" of the debtor in Brazil. According to the "Model Law", that is the place where the debtor conducts ongoing business using people and physical or digital resources. If there is already an active bankruptcy case involving the debtor in Brazil—whether voluntary or not—this recognition request must be submitted to the same court. [183]

The requirements for gaining recognition are outlined in the statute. The application is usually simple and contains sufficient background information to support the request, proof of the "foreign proceeding", and documentation of the foreign representative's appointment. In order to prevent lengthy legalization procedures and provide courts with clarity on whether to grant the request, one of the main goals of the Model Law is to make this process straightforward and predictable.[184]

For an foreign proceeding to be acknowledged under Brazilian law aligned with the "Model Law", it must be a "collective proceeding". This means the case must involve the debtor's overall financial situation, dealing with most of its assets and debts, and not just an isolated claim by a single creditor. The idea is to support an internationally coordinated solution that benefits all parties involved, rather than helping just one creditor chase payment or allowing a company to wrap things up without resolving its full list of obligations. As part of recognition, the court must indicate the COMI[185]. That's a crucial step, as it influences the kind of assistance the court can provide. If the insolvency case was filed in the country where the COMI is based, it's treated as a "foreign main proceeding."[186] Otherwise, it is considered as a "foreign non-main proceeding."[187] While the COMI concept is new in Brazilian law and it isn't defined in the updated legislation, but it is a well-known principle in global insolvency practice. It is important not to confuse it

[182]UNCITRAL Model Law on Cross-Border Insolvency (1997) | United Nations Commission On International Trade Law, https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency (last visited Apr 12, 2025).
[183]Journal, *supra* note 172.
[184]*Id.*
[185]Cross-Border Insolvency, *supra* note 28.
[186]Difference between Chapter 15 foreign main and nonmain proceeding - Juras Law Firm, PLC, https://juraslaw.com/difference-between-chapter-15-foreign-main-insolvency-proceeding-and-nonmain-proceeding/ (last visited Apr 12, 2025).
[187]*Id.*

with Brazil's idea of a "principal establishment," which is used in local cases to decide venue and is interpreted inconsistently across court rulings.[188]

Currently, the most accepted view in Brazilian courts defines a debtor's principal establishment as the place where most of its business operations and economic activity are concentrated. However, when identifying COMI" for cross-border cases, Brazilian professionals are encouraged to look at the guidance provided by the "Model Law", its official commentary, and international case law, rather than relying solely on domestic precedent.

The "COMI" idea itself comes from the European framework and is intended to be applied consistently across countries. The official understanding states that the "COMI" is basically where the debtor conducts regular, open, and transparent business management.

In this respect both Brazilian and "Model Law" standards presume the "COMI" is located where the debtor is registered or based, unless there is a strong evidence suggesting the actual place of operations is elsewhere.

Interestingly, Brazil's new law adds a safeguard against **forum shopping [189]—something not found in the "Model Law"**. If a debtor has moved its COMI in a way that appears designed to shift jurisdiction for a more favorable outcome, the case can still be treated only as a "foreign non-main proceeding." While this measure aims to promote legal integrity, it could also raise new disputes over whether the change in COMI was made in good faith and what time period should be examined to evaluate the debtor's motives, as the law does not yet clarify that detail.[190]

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[188]Jocelyn Hurtado, *Cross-Border Insolvency In Brazil: The UNCITRAL Model Law Dances to A Samba Beat • Sequor Law*, SEQUOR LAW (2021), https://www.sequorlaw.com/news-release/cross-border-insolvency-in-brazil-the-uncitral-model-law-dances-to-a-samba-beat (last visited Apr 12, 2025).

[189]bing.com/ck/a?!&&p=0962c1bf403f3becd94211687a23591b39c1702cf21b679aeb48b3cf600cd518JmltdHM9MTc0NDMyOTYwMA&ptn=3&ver=2&hsh=4&fclid=34e90474-a07d-6e22-0f6a-1735a18a6f6f&psq=forum+shopping+in+cross+border+insolvency&u=a1aHR0cHM6Ly93d3cuZXRkLmNldS5lZHUvMjAyMi9mZWhlcl9saWxpLnBkZg&ntb=1, https://www.bing.com/search?q=forum%20shopping%20in%20cross%20border%20insolvency&qs=n&form=QBRE&sp=-1&ghc=1&lq=0&pq=forum%20shopping%20in%20cross%20border%20insolvency&sc=11-41&sk=&cvid=0430B18CD8654612B9785B3CD811228C (last visited Apr 12, 2025)."

190"Hurtado, *supra* note 179.

Relief Options After Recognition:

Although the process of gaining recognition under Brazil's CBI rules is based on clear legal standards, the types of assistance or relief that courts can grant afterward are more open-ended and discretionary. This structure balances two important goals: making recognition itself predictable and efficient, while still allowing judges enough freedom to tailor outcomes that suit the needs of each case.[191]

Brazil's updated law gives foreign representatives a wide range of potential relief, both before and after a case is officially recognized. Even before a ruling is made on the recognition request, the "foreign representative" can ask the court for temporary measures—like injunctions—to safeguard the debtor's estate, help manage the case more effectively, or ensure that Brazil's insolvency rules are followed.[192]

Once the case has been formally recognized—whether as a primary or secondary foreign proceeding—the court can grant a broad scope of relief aimed at protecting the company's assets and supporting creditor interests. Unlike the UNCITRAL Model Law[193], Brazil's version offers judges even more flexibility. For example, where the "Model Law" allows courts to grant additional relief only if it's already permitted by local bankruptcy rules, Brazil's law gives courts freedom to approve *any* necessary measure, regardless of whether it's listed in the trustee's usual powers ("Law 11.101/2005, Art. 167-N, V").

Brazil also added a unique feature that goes beyond the Model Law: the new legislation clearly states that the types of relief mentioned are just examples—not an exhaustive list—and that courts may also consider other applicable legal frameworks when deciding what measures to grant ("Law 11.101/2005, Art. 167-A").[194] What's not yet certain is whether this would include legal remedies based on foreign laws—like reversing fraudulent transactions—or if it only refers to other Brazilian laws.

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[191]Hurtado, *supra* note 188.
[192]*Id.*
[193]Fletcher, *supra* note 2.
[194]Law No. 11,101, Art 167 - A, https://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2005/Lei/L11101.htm (last visited Apr 12, 2025).

Some forms of relief are granted automatically when a "foreign proceeding" is recognized as a "main" case. These include: halting specific lawsuits against the debtor; pausing the countdown on legal time limits for enforcement actions; and stopping the debtor from selling or burdening long-term assets without court permission.[195]

We can now discuss some Articles from the above law to get a greater grip of the CBI for Companies in Brazil:

Art. 167 – A[196]: Brazilian law now provides a dedicated legal framework to handle "CBI" cases. This chapter was created to make it easier for Brazilian courts and authorities to work together with their counterparts abroad. The goal here is to foster trust and predictability in international business, making it safer for investors and more efficient for companies facing financial distress. At the heart of these rules is a focus on cooperation, consistency, and transparency. The law encourages judges to adopt a spirit of good faith and alignment with global practices. It recognizes that not every situation can be anticipated, so judges and administrators are given flexibility to respond to unique cases—even using rules from other laws when necessary. Even if there is a clash between these rules and international agreements Brazil is part of, the treaties will take precedence. However, in case, following the law in a particular case would seriously violate public interest, the judge can choose not to apply it. The PP's Office also plays a vital role in these proceedings, and in some cases, decisions may be moved to Brazil's highest court for legal interpretation.

Art. 167 – B [197]: The key terms in this chapter should be understood as follows:

I – A "**foreign proceeding"** is any legal or administrative case that takes place outside Brazil, usually involving multiple creditors. It could be about saving a struggling company, winding it down, or even just putting temporary protections in place. What matters is that it follows the insolvency laws of that country and puts the company's assets and business activities under the control of a foreign authority.

[195]Hurtado, *supra* note 188.
[196]Lei-11.101-de-2005-Falencia-e-Recuperacao-Judicial.pdf, https://legislacaofacilitada.com.br/materiais/leis/Lei-11.101-de-2005-Falencia-e-Recuperacao-Judicial.pdf (last visited Apr 13, 2025).
[197]*Id.*

II – A "**foreign main proceeding"** happens in the country where the company really runs its business and transaction that is where its leadership sits, where its key decisions are made, and where the heart of its operations lies. This is considered the company's main base of activity.

III – A "**foreign non-main proceeding"** is a case opened somewhere other than the company's home base—usually in a place where it has a local office, property, or some kind of business going on, but not its main operations.

IV – A "**foreign representative"** is the person (or organization) officially assigned in that foreign proceeding to either manage the company's assets and operations or to act as the go-to person representing the case in that country. Sometimes, this can even be a temporary appointment.

V – A "**foreign authority"** refers to the judge or administrative body in charge of handling and overseeing the foreign proceeding.

VI – An "**establishment"** is basically any physical location where the company runs real, ongoing business and it is not just a nameplate on the door, but a place where work is actually happening with people, equipment, or services.

Art. 167 – C [198]: The rules in this chapter come into play in the following situations:

I. When a "**foreign authority"** or a "**foreign representative"** formally reaches out to Brazil, asking for cooperation or legal support in connection with a "**foreign proceeding"**.

II. When there's a need for help from a **foreign country** to deal with a case that falls under the scope of this Brazilian insolvency law.

III. When both Brazil and another country are handling **insolvency proceedings at the same time** that involve the **same debtor**, and coordination becomes necessary.

IV. When **creditors** or other stakeholders from abroad either want to file for an insolvency case under this law in Brazil, or they want to take part in one that's already underway.

[198] *Id.*

Art. 167 – D[199]: The court where the debtor's "main business operations" are situated in Brazil is the one having the jurisdiction to handle cases under this chapter. Recognizing foreign proceedings and managing collaboration with international authorities are under the purview of that court.

Paragraph-1

Once a request is officially filed in Brazil to recognize a **foreign proceeding**, no other court can accept a new case involving that same **debtor**—whether it's a request for **judicial reorganization**, **extrajudicial restructuring**, or **bankruptcy**.

Paragraph-2

On the other side, if there's already a Brazilian case ongoing for **judicial or extrajudicial reorganization** or **bankruptcy** of the debtor, then no new request can be filed to recognize a foreign insolvency case involving that same party.

Article 167-E [200]: This Article allows specific individuals to represent a Brazilian legal proceeding in other countries without needing a court order, provided that the law of the country where the "foreign proceeding" is taking place permits it. These individuals include:

I - The debtor, in both judicial and extrajudicial reorganization;

II - The judicial administrator, in cases of bankruptcy.

If the judicial administrator fails to act in the case of bankruptcy, as mentioned in item II, the judge has the authority to appoint a third party to carry out the duties outlined in this article.

Moreover, any of the individuals listed above may request the court to certify their status as the official representative of the Brazilian proceeding.

Art. 167 – F[201]: Article 167-F grants the "foreign representative" the right to request the Brazilian judge, in line with the provisions of this Chapter.

[199] *Id.*
[200] *Id.*

§ 1. Submitting a request to the Brazilian judge does not subject the "foreign representative", the debtor, or their assets and activities to Brazilian jurisdiction, except within the narrow scope of the specific request made.

§ 2. Once the "foreign proceeding" is acknowledged, the "foreign representative" is authorized to:

I - File a "bankruptcy petition" against the debtor, provided the conditions outlined by this Law are met;

II - Take part in any ongoing judicial reorganization, extrajudicial reorganization, or bankruptcy procedures concerning the same debtor in Brazil;

III - Participate in any legal action where the debtor is involved, provided they comply with the requirements of Brazilian law.

Art. 167 – G [202]: Article 167-G ensures that foreign creditors are treated equal as domestic creditors in "judicial reorganization, extrajudicial reorganization, or bankruptcy proceedings".

§ 1. Foreign creditors must receive equal treatment to domestic creditors, adhering to the credit classification order established by this Law. They cannot be discriminated against based on their nationality or the location of their headquarters, establishment, residence, or domicile. However, the following conditions apply:

I - Foreign credits related to taxes and social security, as well as monetary penalties for criminal or administrative violations (including tax fines owed to foreign states), will not be considered in judicial reorganization proceedings and will be classified as subordinate claims in bankruptcy proceedings, regardless of their classification in the country where they arose; II - The foreign representative's credit will be treated the same as that of the judicial administrator when entitled to remuneration, unless the foreign representative is the debtor or their representative; III - Credits not matching the classification in this Law will be treated as unsecured, irrespective of how they are classified under the laws of the country in which they were created.

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[201] *Id.*
[202] *Id.*

§ 2. The judge must take appropriate steps in each case to ensure that foreign creditors, who do not have a domicile or establishment in Brazil, receive notifications and information about the judicial reorganization, extrajudicial reorganization, or bankruptcy proceedings.

§ 3. Notifications and information to foreign creditors will be made by any method the judge deems suitable, without the need for a letter rogatory.

§ 4. Notifications about the initiation of judicial reorganization or bankruptcy proceedings for foreign creditors must include details on how the creditor can assert their rights, including deadlines for filing claims or objections, and instructions for secured creditors to validate their claims.

§ 5. The Brazilian judge will issue the necessary letters and warrants to the "Central Bank of Brazil" to facilitate the transfer of funds abroad to creditors residing outside Brazil.

Art. 167 – H [203]: The "foreign representative" is entitled to petition(containing the specified requirements) the judge for recognition of the "foreign proceeding". The petition must also include a list of all "foreign proceedings" related to the debtor that the FR is aware of. Documents in a foreign language must be accompanied by an "official translation" into Portuguese, unless the judge explicitly permits a simple translation into Portuguese, which must be declared accurate and authentic by the lawyer, who will take personal responsibility for its accuracy, provided such a waiver does not harm the creditors.

Art. 167 – I [204]: In addition to other actions, the judge may:

I - Verify the FP's existence and the FR's identification using the certificate or decision listed in Article 167-H, paragraph 1, which specifically names them as such;
II - Verify all or some of the documents—even if they haven't been apostilled—that were included with the request for recognition of the FP; III-Identify the nation as the "COMI", unless there is proof to the contrary.

[203] *Id.*
[204] *Id.*

Art. 167 – J: Unless a specific exception applies under Article 167-A, § 4, Brazilian courts **are to accept an "FP"** if a few core conditions are fulfilled:

1. The case qualifies as an FP, meaning it meets the legal definition laid out in Article 167-B, item I.
2. The individual asking for recognition is acting as a**n FR**, as defined in Article 167-B, item IV.
3. The application includes the proper documents and meets all the procedural rules under Article 167-H.
4. The request is submitted to the right court, as specified in Article 167-D. Once these criteria are satisfied, the judge will officially recognize the foreign case, and categorize it as either: When the court agrees that all of the above conditions are met, it will recognize the proceeding as either an "FMP" or an "FNMP".

§2 – Abuse of Jurisdiction Clause

If there's evidence that the debtor moved their main operations to another country just to manipulate which jurisdiction would handle the case, the court won't grant it "main" status but as a "**non-main proceeding"**, even if it seems otherwise.

§3 – Reversibility of Decision

The court's decision to recognize the foreign proceeding isn't locked in forever. If any interested party presents solid proof that the requirements have either never been fully met or are no longer valid, the judge can change or cancel the recognition at any time.

§4 – Appeals

If the court **approves** recognition, that decision can be **challenged through appeal**. Similarly, if the request is **denied**, the petitioner has the right to **appeal** the ruling.

Article 167-K – Duty to Keep the Court Informed:

Once a **FR** has submitted a request asking the Brazilian court for the validation an **FP**, they're obligated to keep the judge updated with any important developments, without delay. This includes:

1. **Changes in the status** of the foreign case that's already been recognized, or any updates about the representative's own legal standing or authority in that proceeding.
2. The **discovery of any other FP** connected to the same debtor, even if it's happening in another jurisdiction.

Article 167-L – Temporary Measures Before a Recognition Decision:[205]

If there is a definite necessity, the judge may give interim relief after the official application for recognition is submitted but before the court has made a decision. These actions, which must be motivated by urgency or strong evidence, are meant to:

- Help **enforce the law** effectively;
- **Safeguard the properties of the indebted entity** that are part of the bankruptcy estate;
- Ensure the **efficient administration** of the case in Brazil.

§1 – End of Temporary Relief

Unless otherwise stated in **Article 167-N, item IV**, any **provisional orders** granted at this stage will **automatically expire** once the judge makes a final decision about whether or not to validate the FP.

§2 – Limitation of Relief

The court also has discretion to **decline temporary relief** if it tampers **with the "main foreign proceeding"**, particularly if that proceeding is already being actively managed abroad.

Article 167-M – Effects of Recognizing a Main Foreign Proceeding:[206]

Once a **main FP** is officially recognized by a Brazilian court, three important legal consequences take effect **immediately** — no need for an additional ruling:

- Unless otherwise permitted by this law, any individual collection activities or enforcement processes brought by creditors against the debtor's assets are suspended.

[205] *Id.*
[206] *Id.*

- In line with the remainder of this law, the statute of limitations for any litigation attempting to pursue debts against the debtor expires.
- If the debtor sells, transfers, encumbers, or otherwise disposes of non-current assets without first obtaining court approval, the action is legally void.

Additional Provisions:

§1 – Changes to These Effects

Whether these automatic effects continue, end, or change in scope will depend on what this law allows.

§2 – Creditors' Procedural Rights Remain

Creditors still have the right to **sue the debtor**, **initiate arbitration**, or **seek a legal ruling to confirm and quantify their claims**. However, even if they win their cases, they **cannot enforce** the judgment — enforcement remains **suspended**.

§3 – Protection for Non-Subject Creditors

If a creditor is **not covered** by judicial reorganization, out-of-court reorganization, or bankruptcy under Brazilian law, these automatic consequences **won't apply to them** — except in situations where the law explicitly allows it.

Article 167-N – Measures Available After Recognition:[207]

Following the recognition of an FP, whether main or non-main, the court may approve particular judicial measures at the request of the FR. According to paragraph 1, the judge may give the FR —or another authorized person—authority to manage or sell the debtor's assets situated in Brazil after acknowledging the FP. Such approval is contingent on the interests of creditors with Brazilian domiciles or establishments being sufficiently protected.

According to paragraph 2, the judge must make sure that any authorized measures only apply to assets that, according to Brazilian law, are within the purview of a non-main FP or relate to

[207] *Id.*

pertinent information needed for such proceedings if the FR of a non-main foreign proceeding makes the request for assistance.

Article 167-O – Judicial Considerations in Granting or Modifying Measures:[208]

The court has to ensure that the rights and interests of creditors, the debtor, and other parties involved are sufficiently protected when determining whether to grant or deny any of the measures established under Articles 167-L and 167-N, as well as when contemplating their modification or revocation in accordance with "Paragraph 2" of this Article. In order to safeguard the parties, the court may also place restrictions on the issuance of any measures it thinks necessary. Furthermore, the court can change or revoke previously authorized measures issued under Articles 167-L and 167-N at any time, upon the request of an interested party, the FR, or on its own initiative.

After recognition, whether main or non-main, the FR may pursue legal action to nullify debtor acts covered by Articles 129 and 130 of this Law, while adhering to the conditions outlined in Article 131.

Only if the court certifies that the assets in issue must, in accordance with Brazilian law, fall within the legal framework applicable to "non-main proceedings" would such invalidation of actions be authorized in the particular setting of a non-main international case.

Article 167-P – Cooperation with Foreign Authorities and FRs:[209]

To the fullest extent possible, the court must cooperate—either directly or through the judicial administrator—with foreign authorities or foreign representatives in achieving the objectives laid out in Article 167-A of this Law. Judges and court administrators can directly communicate with foreign officials for information or assistance without using formal diplomatic channels. They must also actively cooperate with foreign representatives, under court supervision, as part of their duties.

[208] *Id.*
[209] *Id.*

Article 167-Q:[210] The cooperative measures outlined in Article 167-P of this Law can be carried out through various methods, including but not limited to the following:

1. The designation of a person or organization to act under the judge's supervision.
2. Providing pertinent information in whatever way the court thinks appropriate.
3. Organizing the administration and oversight of the debtor's resources and activities.
4. Accepting or carrying out procedures or agreements for collaboration aimed at expediting legal proceedings.
5. Ensuring that various debtor-related processes are coordinated.

Article 167-R:[211]Only if the debtor has assets or a business presence in Brazil can a Brazilian judicial reorganization, extrajudicial reorganization, or bankruptcy action be started there after a main FP has been recognized.
Only the debtor's assets or business presence in Brazil will be affected by any procedures that are started there, however they may go further if needed to help with coordination and collaboration with the main FP.

Article 167-S:[212] When a foreign proceeding and a Brazilian judicial reorganization, extrajudicial reorganization, or bankruptcy process are ongoing at the same time involving the same debtor, the judge must ensure effective cooperation and coordination between the two, adhering to the following rules:

1. If the Brazilian proceeding has already started when the foreign proceeding is requested for recognition, any assistance measures decided by the judge, according to Articles 167-L or 167-N of this Law, must align with the ongoing Brazilian process. The provisions of Article 167-M won't apply if the FP is acknowledged as the main one.
2. If the Brazilian process is initiated after the FP has either been recognized or the recognition request has been filed, any assistance measures granted under Articles 167-L or 167-N will be reassessed by the judge. If incompatible with the Brazilian process, these measures will be altered or revoked. Additionally, when the FP is acknowledged as

[210] *Id.*
[211] *Id.*
[212] *Id.*

the primary one, the effects outlined in "Items I, II, and III of Article 167-M" will either be modified or cease, as dictated by Article 167-M, Paragraph 1.

3. Any assistance measures granted to a non-main FP will only apply to assets and establishments that, under Brazilian law, must follow the regulations relevant to that FP that is not main or the required information for it.

Article 167-T[213]: According to Articles 167-P and 167-Q of this Law, the court shall seek cooperation and coordination where there are many international actions involving the same debtor. The following should also be taken into account:

1. After recognizing a "main foreign proceeding", any aid to a "non-main proceeding" must align with it.
2. If a "main proceeding' is recognized later, the court will review and modify or cancel earlier aid to ensure consistency.

To make it easier to coordinate all of the procedures concerned, the judge may decide to change, annul, or amend any prior measures if a second "non main FP" is recognized after the first.

Article 167-U:[214]It is assumed that a debtor whose main FP has been recognized in Brazil is insolvent unless there is proof to the contrary.

According to **Article 167-V**, the bankruptcy court in charge of a non-main FP is required to give the main court specific information, such as:

1. The total amount of assets gathered and liabilities incurred.
2. The categorization and total value of the admitted credits.
3. The grouping of creditors who, according to national law, are neither based or domiciled in nations whose credits are governed by international law.
4. A list of current disputes having the debtor as a party, either as a plaintiff, defendant, or interested party.

[213] *Id.*
[214] *Id.*

5. Details on the liquidation's conclusion, including any outstanding debt or creditor balances and the condition of any surviving assets.

Article 167-W:[215]If there are still unpaid obligations in any other transnational bankruptcy proceeding, no assets, products, or leftover resources from the liquidation will be given to the bankrupt in a transnational bankruptcy process, whether it is main or non-main.

Article 167-X:[216] The main transnational bankruptcy proceeding can only be concluded once the non-main proceedings are closed or after it has been established that there are no remaining net assets in those proceedings.

Article 167-Y :[217]So long as payments have been made to creditors of the same class, the creditor who previously obtained a portion of their claim in foreign bankruptcy proceedings cannot claim the same debt in Brazilian proceedings pertaining to the same debtor, regardless of any entitlements over assets or claims from real guarantees.

To conclude, we can say that, Brazil's approach to freezing legal actions is flexible than in some other countries. There are many legal carve-outs that still allow certain lawsuits to proceed. So, Brazil does offer automatic and discretionary protections under its version of the "Model Law", the scope of those protections is more debatable compared to what creditors might expect in other jurisdictions.

Brazil's Updated Approach to CBI and the Implementation of the JIN Guidelines:

In March 2020, the "National Council of Justice" released "Recommendation No. 63". This guidance helped bankruptcy and reorganization courts navigate the crisis by encouraging practical and flexible measures, such as prioritizing urgent requests from creditors and debtors, shifting in-person creditor meetings to virtual platforms, extending protection periods, supporting

[215]*Id.*
[216]*Id.*
[217]*Id.*

revised reorganization plans when companies couldn't meet their original terms, and enabling remote monitoring by court-appointed trustees. [218]

Building on this digital momentum, in October 2020, the Council also approved "Resolution No. 345". This allowed State Courts to establish fully virtual operations, meaning all legal procedures could be conducted online, without requiring any physical appearances from the parties involved, at any stage of the case. As the COVID-19 pandemic forced major shifts in how institutions operated, it also brought a heightened awareness of the financial struggles many businesses were facing. This growing concern gave momentum to the legislative push for changes to Brazil's bankruptcy and restructuring laws. The result was the approval of Law No. 14,112/2020, which came into effect on January 23, 2021. [219] This new legislation introduced sweeping updates to Brazil's insolvency system, aiming to modernize how the country handles corporate financial distress. A key feature of the law was the full incorporation of the MLCBI of UNCITRAL to guide international insolvency cases.[220]

These legal updates, along with various measures adopted by Brazil's NCJ, were designed to foster a healthier economic environment. The intention was not just to improve efficiency in insolvency proceedings, but also to support economic growth, strengthen legal governance, and enhance Brazil's standing in global benchmarks like the W.B's "Doing Business" rankings.

On May 18, 2021, the NCJ introduced Resolution No. 394 in accordance with these developments and to promote Brazil's recent pledge to cooperate internationally in insolvency cases. This decision opens the door for more efficient and well-coordinated international legal processes by clearly defining the rules under which Brazilian courts may work directly with other courts abroad in CBI cases.[221]

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[218] panel 3. costa jin guidelines.pdf, https://www.iiiglobal.org/file.cfm/46/docs/panel%203.%20costa%20jin%20guidelines.pdf (last visited Apr 13, 2025).

[219] UNCITRAL Model Law on Cross-Border Insolvency in Force in Brazil | LawsofBrazil, https://lawsofbrazil.com/uncitral-model-law-on-cross-border-insolvency-in-force-in-brazil/ (last visited Apr 13, 2025).

[220] *Id.*

[221] Judicial Insolvency Network, https://www.jin-global.org/jin-guidelines.html (last visited Apr 13, 2025).

When Brazilian judges participate in international insolvency cases and sign cooperation protocols, they must follow certain principles outlined by the JIN. These include:

1. Courts from different countries can communicate directly with each other to coordinate major procedural or substantive matters. These communications should allow the involved parties to observe, unless the specific protocol allows an exception—typically in urgent or exceptional circumstances.
2. If parties are allowed to take part in such communications, they must be given at least five days' notice before the communication takes place, unless there's a pressing need that justifies quicker action as acknowledged by the court.
3. Whenever these communications are public, they must be recorded and made fully accessible to all parties involved in the proceedings.
4. The timing and format of communications between courts will be arranged through mutual agreement, ensuring flexibility and cooperation.

Additionally, courts may choose to hold joint sessions if they believe it would help achieve the goals of cross-border cooperation. These joint proceedings should follow the structure agreed upon in the specific protocol and be guided by the principles laid out in the JIN's framework for international collaboration in insolvency cases. [222]

Brazil has recently taken significant steps to modernize how it handles companies facing financial trouble. With updates to its insolvency laws and new guidelines from the National Council of Justice, the system now openly embraces digital tools and virtual platforms to streamline these processes. Additionally, by incorporating international standards for cross- border insolvency and following the JIN Guidelines on communication and cooperation, Brazil is aligning more closely with global practices. These changes are expected to bring more clarity and reliability to legal proceedings, which can boost investor confidence and encourage more foreign businesses to invest in the country.[223]

[222] *Id.*
[223] panel 3. costa jin guidelines.pdf, *supra* note 218.

India:

CBI matters of corporations is dealt u/s 234 and 235 of the IBC, 2016 primarily.

A) Section 234: The Central Government can make agreements with other countries to implement the Code, and may apply its provisions to a debtor's foreign assets (including those of guarantors) by issuing a notification.

B) Section 235: If a debtor's assets are abroad (in a country with an agreement under Section 234), the resolution professional can ask the Adjudicating Authority to seek help from a foreign court, which may then issue a formal request for assistance.

It was observed that no steps had been taken to appropriately execute the agreements between different governments. As of right now, no foreign nation would directly accept or enforce an NCLT order in a CBI situation. Furthermore, the complex problems that emerge from CBI cases are not sufficiently addressed by these regulations. In light of this, on 16th November 2017, the MCA established an ILC, which presented its initial Report in March 2018. Then the second part of the "ILC Report", which included recommendations for the adoption of the "UNCITRAL MLCBI" and the modifications required for its application in the Indian context, was presented in October 2018.[224]

The proposed rules under the Draft Provisions to the Code are only applicable in situations when the corporate debtor possesses assets located in India. This guarantees that the insolvency procedure is under the jurisdiction of Indian courts. However, foreign creditors are also included in the process. This law unifies several insolvency regulations for individuals, partnerships, and corporations. **Provisions pertaining to partnerships and individuals, however, have not yet been completely put into effect.**

Draft "Part Z" can be discussed as follows:

Chapter 1: General Provisions

[224]Manasi Lad-Gudhate, *Cross-Border Insolvency*, *Chartered Secretary*, Apr. 2023, at 67, https://www.icsi.edu/media/webmodules/CSJ/April/15ArticleManasiLadGudhate.pdf."

1. Objective and Scope :

1. This section aims to integrate principles from the MLCBI to effectively manage CBI matters, with the following intentions:
    - Establishing collaboration between Indian insolvency authorities and international judicial bodies, insolvency professionals, and related stakeholders.
    - Ensuring legal clarity to encourage global commerce and investment.
    - Promoting fair and streamlined resolution processes that consider all involved parties, including the distressed business.
    - Securing and maximizing the value of the distressed company's assets.
    - Supporting business turnarounds to maintain investor confidence and safeguard jobs.
2. These rules will apply to all companies governed by this Code, in situations like:

    - A request for aid in India made by a foreign government or its FR.
    - When Indian officials look outside for assistance with domestic insolvency issues.
    - If the same entity is the subject of both current Indian and foreign litigation.
    - In the event that foreign parties choose to start or participate in legal proceedings within this Code.

    It is to be noted here that for this Part, "corporate debtor" also includes any foreign-registered company with limited liability.

3. The central government retains the authority to exempt specific classes of companies or entities from these provisions.
4. Initially, these rules are applicable to nations that have ratified the "Model Law" and are mentioned in "Part A" of the Schedule. According to the central government's declaration, they could also be applicable to other nations included in "Part B".
5. To help this Code be implemented in other jurisdictions, the government may sign international agreements. It may publish guidelines outlining the requirements for implementing these regulations to foreign assets in the Official Gazette.
6. Despite anything stated earlier, and subject to clause 29:

- The government may add or remove countries from the Schedule in the interest of national or public safety.
- It may also impose conditions or limitations on applying this Part in relation to specific countries, for the same reasons.

2. Definitions: [225]

In this context:

- The NCLT benches authorized to acknowledge international insolvency cases and collaborate with courts abroad and FRs are referred to as *Adjudicating Authorities*.
- *"COMI"* is as defined under clause 14.
- *"Establishment"* means any location where the indebted entity conducts significant and ongoing business using staff and resources.
- *"Foreign court"* includes any official authority abroad overseeing insolvency matters.
- *"Foreign main proceeding"* occurs in the country where the debtor's primary operations are based.
- "Foreign proceeding" refers to any abroad process—judicial or administrative—under insolvency rules when the debtor's activities or assets are under surveillance for restructuring or liquidation.
- "Foreign non-main proceeding" happens when the debtor operates but not at its main location.
- A "foreign representative" is the individual or organization permitted to supervise or represent the debtor's foreign bankruptcy procedure, even temporarily. It should be emphasized that "reorganisation" in this context corresponds with "resolution" under the Code.

[225]Cross Border Insolvency Rules 2020 India.pdf, https://nludelhi.ac.in/download/Cross%20Border%20Insolvency%20Rules%202020%20India.pdf (last visited Apr 14, 2025).

3. Permission for Insolvency Professional or Liquidator to Work Abroad

If someone has been officially allowed or approved to act as a "resolution professional" or "liquidator" under this Code, then they are also allowed to carry out their duties in another country — but only if the rules of that country also allow it, and they follow the regulations set by the Indian insolvency board.

4. If Something Goes Against Indian Public Policy

1. Even if this Part allows something to happen, the Indian tribunal can say no to it **if they believe** it clearly goes against India's core public principles or values.
2. But before doing that, the tribunal should first **let the central government know** and give them a chance to share their opinion on the issue.
3. Apart from the tribunal, the central government can also **step in directly** and ask the tribunal to block an action if the government thinks that action would seriously go against India's public interest or policy.

5. Extra Help Through Other Indian Laws

Even though this Part has its own rules, the tribunal, or the person handling the insolvency (like the resolution professional or liquidator), can still give more help to a foreign representative — if that help is allowed under any other Indian law.

6. How This Part Should Be Understood

When reading and understanding this Part, it's important to keep in mind that it's based on international standards. The goal is to keep its meaning and use consistent everywhere, and to deal with these matters honestly and fairly.

Chapter 2:

7. Entitlement of Foreign Representatives to Apply

1. A representative from another country, designated in an overseas insolvency case, is permitted to file an application before the designated tribunal and carry out functions as per this section.
2. But such a representative will be bound by a code of professional ethics or conduct, as specified by regulations.

8. Jurisdictional Boundaries

1. Except as outlined in the next sub-section, merely submitting a request under this section to the Indian tribunal does not mean the representative or the foreign debtor's estate becomes generally subject to Indian judicial control beyond that particular application.
2. However, if the representative violates any rule or regulation under this Part:
    - The regulatory authority can impose a monetary penalty up to three times the actual or estimated damage suffered by the affected parties.
    - Alternatively, the penalty can be three times the unlawful gain realized from the violation.
    - The regulator may also impose any applicable directions normally issued to insolvency professionals.
3. These provisions will apply even to the individuals who falsely claim to be a foreign representative under this Part.

9. Role in Domestic Proceedings

After a foreign insolvency is acknowledged by the tribunal, the "FR" is allowed to engage in any domestic proceedings related to the company involved.

10. Rights of Overseas Creditors

1. Foreign creditors are granted the same opportunity to initiate or join insolvency proceedings in India as local creditors, subject to the next provision.

2. This parity in participation does not however alter how claims are ranked in the Indian process, nor does it affect the exclusion of claims related to foreign taxes or social contributions.
    - But the claims by foreign parties—excluding tax or social dues—should not receive a rank below those in "section 53(1)(f)" unless a comparable domestic claim is assigned a lower status.

11. Notification to Overseas Creditors

1. When notice is issued to Indian creditors under the Code, similar communication must also reach known foreign creditors, even if their address is outside India.
2. The form and method of delivering such notices will be defined by regulation. The process does not require formalities like letters rogatory.
3. When notifying the start of insolvency, the notice should:
    - Provide the time limit and location for submitting claims.
    - Indicate whether secured claims must be filed, in accordance with Indian law.
    - Include any additional information mandated by Indian legal requirements or tribunal orders.

Chapter 3:

12. Requesting Acknowledgment of a Foreign Case

1. After fulfilling the access requirements, a representative from another country may request the Indian tribunal to officially recognize the insolvency proceeding they're part of abroad.
2. This request must include:

    - A certified copy of the ruling that authorized the representative's appointment and initiated the international proceeding, or
    - A declaration from the foreign court confirming the FR's appointment and the presence of the case; or

- In the event that none of the aforementioned is available, other evidence as specified by regulation attesting to the FP and FR's function.
- A statement listing all known insolvency issues pertaining to the firm, both domestically and internationally.
- Translations in English of all supporting documents, if not originally in English.

3. The application must follow the prescribed format and be submitted along with any necessary fees.

13. Assumptions During Recognition Process

1. If the documents submitted under Clause 12 clearly show that the case fits the definition of an FP and the petitioner is a legitimate FR, the tribunal may presume these facts to be true.
2. The tribunal may treat the submitted documents as valid, even if they haven't been formally legalized, unless there's evidence to the contrary.

14. Determining the Company's Main Operational Base

1. By default, it's assumed that the company's primary operations are situated in the country where its R.O is located.
2. Only if the business hasn't moved its R.O to another nation within three months of declaring insolvency there, does this assumption remain true.
3. To decide the actual central hub of operations, the tribunal should examine where the company is truly managed and whether this is evident to outside observers like creditors.
4. If the central location is unclear, the tribunal may consider other factors that the government prescribes to make a fair judgment.

15. Decision on Recognition

1. Provided no conflict with Indian public policy arises, the tribunal must grant recognition if:
    - The case qualifies as an FP,

- The individual seeking recognition is a legitimate FR,
- The application fulfills all specified requirements.

2. Recognition will be categorized as:

    - It may be a "foreign main proceeding" if it takes place in the nation where the debtor's primary business is located, or it may be a "foreign non-main proceeding" if it takes place in a nation where the corporation has a secondary business.

3. Recognition may be adjusted or withdrawn if it turns out that the criteria weren't fully met or are no longer valid.
4. The tribunal must decide on a recognition request within 30 days of filing, with a possible extension of up to 30 additional days if necessary.

16. Ongoing Disclosure Duties

Once the application for recognition is submitted, the FR must update the tribunal within three days of discovering:

- Any significant change in the foreign case or their own status,
- Any other insolvency-related action involving the same company, whether in India or abroad.

17. Consequences of Recognizing a Main F.P:

The tribunal would often impose a "moratorium" if a foreign case is recognized as a main proceeding on:

- New lawsuits or the continuation of ongoing legal actions against the corporation, including the enforcement of court rulings, if a foreign case is recognized as a primary process.
- Any transfer, pledge, or sale of the business's assets or stakes.
- Security interest enforcement or foreclosure, including in accordance with Indian banking asset recovery regulations.

- Recovering any owned or leased property that is in the debtor's custody.

This moratorium respects any specified exceptions and is in accordance with the general guidelines under Section 14 of the Code. Creditors can still file legal claims to protect their rights during the moratorium. The moratorium doesn't restrict filing new insolvency proceedings or claims under Indian law.

18. Relief Following Recognition

1. Once a main F.P or non-main F.P is recognized, and if needed to protect the company's assets or creditor interests, the tribunal may issue additional relief such as:
    - Halting legal actions not already covered under the moratorium.
    - Freezing the alienation or usage of the company's property.
    - Stopping foreclosure or asset recovery actions not already stayed.
    - Preventing recovery of leased property still used by the company.
    - Handing over asset management in India to the foreign representative.
    - Granting any other relief available to an Indian insolvency professional.
2. The tribunal may also authorize the distribution of Indian-based assets by the foreign representative or someone designated, as long as Indian creditors' rights are protected.
3. If the relief is being granted in support of a "non-main proceeding", it must concern assets or information relevant to that proceeding under Indian law.

19. Safeguarding Stakeholders

1. While deciding on any relief (including modifications or terminations), the tribunal must ensure fair treatment of all affected parties, including the company.
2. Conditions may be attached to the relief as the tribunal sees fit.
3. The tribunal has the authority to modify or rescind previously awarded remedy "suo moto" or by the request of the "F.R".

20. Challenging Transactions Harmful to Creditors

1. Once a foreign proceeding is recognized, the foreign representative can apply for orders under Indian insolvency laws (Sections 43, 45, 49, 50, and 66) to reverse deals that unfairly harm creditors.
2. The "start date" of the foreign insolvency for these purposes will follow the laws of the country where it is taking place, including rules that may consider the case as having started earlier.
3. The tribunal must be convinced that the associated assets are ones that, in accordance with Indian law, need to be handled through that procedure if this involves a non-main F.P.

Chapter 4:

21. Interaction Between Indian Tribunal and Foreign Authorities

1. For CBI cases mentioned earlier, the Indian government, in collaboration with the tribunal, will set out official protocols to guide communication and coordination between domestic courts and their international counterparts, keeping the interests of all stakeholders in view.
2. The tribunal may hold joint sessions with the appropriate foreign court in ongoing bankruptcy proceedings involving both India and another country. Directly requesting information or help from the relevant foreign representation is also allowed.
3. The central authority will designate a relevant agency to support the tribunal by managing the sending and receiving of notices and other official communications to and from international courts.
4. All notifications referenced here will be issued following the procedure defined under clause 29 of this section.

22. Coordination by Indian Insolvency Professionals with Foreign Parties

As long as the tribunal is monitoring, Indian resolution specialists or liquidators are required to work as closely as possible with foreign courts and their representatives in CBI cases under this

Part. In order to carry out their responsibilities efficiently, these specialized professionals are also permitted to speak with foreign courts or their representatives directly—again, under the tribunal's supervision.

23. Means of Collaboration

According to the cooperative measures outlined in clauses 21 and 22, collaboration between Indian and foreign parties may occur in various forms, such as:

- Designating individuals or groups to act under the tribunal's instructions.
- Sharing relevant information using any communication methods the tribunal finds suitable.
- Synchronizing the management and oversight of the debtor's assets and affairs.
- Approving or implementing agreements between courts for coordinated case handling.
- Managing parallel legal proceedings related to the same business entity.

Dealing with Two Proceedings Together

24. Starting an Indian Case After a Foreign One Is Already Accepted:

Once a foreign case is already accepted as the main one by the Indian court:

(a) A new case can be started under Indian rules only if the company in question owns some things (assets) here in India.

(b) Also, whatever actions or legal steps happen in this new Indian case must only apply to:

- (i) The company's properties or stuff that is physically in India.
- (ii) And if needed, any other properties that, according to Indian rules, should be handled in this case—just to help with working smoothly together with the other country's court and share details properly, like mentioned in earlier clauses (21, 22, and 23).

25. Handling Both Indian and Foreign Cases at the Same Time:

If a company is going through an insolvency case in another country and also under Indian law at the same time, the Indian tribunal has to try and work together with the foreign court, like explained in points 21, 22, and 23. Here's how it works:

(a) If the Indian case is already running when someone applies to get the foreign one recognized in India:

- (i) Any kind of help or decision already given under point 18 (when recognizing the foreign case) has to match and not clash with what's happening in the Indian case.
- (ii) Also, if that foreign case is officially accepted as the *main one*, then the rule in point 17 (about pausing actions like lawsuits and asset handling) won't apply.

(b) But if the Indian case starts **after** the foreign one has already been accepted:

- (i) Then, the tribunal must take another look at any ongoing relief or orders under point 18. If those don't fit with the Indian case, they have to be changed or canceled.
- (ii) And if the non – domestic case is a "*main proceeding"*, the order to pause everything (mentioned in point 17) must also be adjusted or stopped if it doesn't match with the Indian case.
- (iii) Any action that the foreign representative already took under point 20 before the Indian case started also needs to be reviewed. After checking, the tribunal can decide what should happen next with those actions.

(c) When an Indian court grants, modifies, or extends any relief to an individual overseeing a "non-main foreign proceeding," it must ensure that the remedy pertains solely to the company's assets that, according to Indian law, should be addressed in that non-main case, or it needs to be about details required in that foreign case.

26. Dealing with More Than One Foreign Case for the Same Company

If there's more than one foreign insolvency case happening at the same time for the same company, the Indian tribunal has to try and cooperate and coordinate with the other courts or

representatives, just like mentioned earlier in points 21, 22, and 23. Here's how the coordination should be handled:

(a) If a foreign case that's **not** the main one is already recognized, and later a **main foreign case** gets accepted, then any help or decision already given under point 18 has to match with what's going on in the newly recognized main case.

(b) If it happens the other way around — meaning, a **main foreign case** gets recognized **after** a non-main one — then the tribunal has to check any help or decisions already in place (from point 18) and change or cancel them if they don't go along with the main case.

(c) If a second non-main foreign case also gets accepted after the first non-main one, then the tribunal has to either allow, adjust, or stop any support or relief given — so everything works smoothly and all the cases stay properly coordinated.

27. Assuming a Company Is Insolvent Based on a Foreign Main Case

Unless someone proves otherwise, if an overseas main insolvency case is accepted in India, it will be taken as proof that the company has defaulted — like what's explained in section 4 of this Code.

It is to be noted here that this only counts if the reason the foreign case started is because the company couldn't pay its debts or was already in a serious financial crisis.

28. Payment Rules When More Than One Case Is Going On

(1) If a company is going through the resolution process under Indian law, and a creditor already got part of their money back from a foreign insolvency case for the same company, then that creditor **can't get more money** from the Indian case **until** other creditors of the same level get an equal or better deal in the resolution plan.

(2) In the case of liquidation (when the company is being shut down and assets are sold), the same rule applies: if the creditor already received a part payment from a foreign insolvency, they

must wait. They can't get more money from the Indian case **unless** other creditors in the same group or rank are getting at least as much as they did.

This doesn't affect secured claims or rights tied to specific property — those still stay protected.

29. Government's Power to Make Official Announcements

1. Even though this Code already gives rules, the central government still has the authority to release official announcements (called notifications) related to some specific points — like 1(3), 1(5), 1(6), 2(a), 21(1), and 21(3). These will be publicized in the "Official Gazette", as explained in the next part.
2. Once a notification is issued, it must be presented to the Parliament as soon as possible. It should be available while Parliament is meeting — for a total of 30 days. This can be across one session or spread over more than one session.
    - If both Houses of Parliament agree during or right after those sessions that the notification needs to be changed or even canceled, then it will only apply in the new changed form — or not apply at all.

30. How to Appeal a Tribunal Decision

1. If someone is unhappy with a decision made by the Adjudicating Authority under this Part, they can challenge it by appealing to the **NCLAT** — even if the CA, 2013 says otherwise.
2. This appeal must be submitted within **30 days** to the NCLAT.

    But if someone misses this 30-day deadline, the Tribunal can still accept the appeal **if there's a good reason** for the delay — but only for **up to 15 more days**.

31. Taking It to the Supreme Court

1. If a person still disagrees with the decision made by the Appellate Tribunal (NCLAT), they can go to the **SC**— but only if it's about a legal question (not just facts). This must be done within **45 days** after receiving the order.

2. If the person couldn’t appeal in time and has a solid reason for the delay, the SCmay allow a little more time — **but no more than 15 extra days**.

Therefore, a systematic framework for identifying and handling international insolvency proceedings in India is introduced by the draft regulations on CBI. They set explicit relief procedures, guarantee judicial collaboration, distinguish between "main and non-main proceedings," and develop guidelines for concurrent insolvency cases. However, how reciprocity is used, how public policy is read, and whether procedural issues can be effectively resolved will all affect how successful they are. Although these measures bring India into compliance with international insolvency norms, their effectiveness will depend on international collaboration, legislative effectiveness, and judicial clarity.

Comparison of India's CBI Framework with that of Russia:

The comparison between the Insolvency Practices of Russia and India can be done based on the following points:

1. **Definition:**

   India (Draft "Part Z"& IBC Section 234, 235): At the moment, India lacks a comprehensive legislation pertaining to the framework for CBI. Although they are rarely utilized in reality, Sections 234 and 235 provide the Central Government the authority to send letters requesting cooperation and to engage into bilateral agreements. By providing definitions for phrases like "foreign proceeding," "foreign main proceeding," "foreign non-main proceeding," and "foreign representative," "Draft "Part Z", attempts to address this. It permits court collaboration and the acknowledgment of cases from other countries.

   Russia (Bankruptcy Law + Civil Code): Russia also lacks a single dedicated law but spreads the rules across various codes. It uses laws like "**Article 65 of the Civil Code** and **Articles 1 and 131 of the Bankruptcy Law**, along with **Articles 241–244 of the Arbitration Code**. Russia also uses the concept of "**lex fori concursus"**. Russia gives foreign insolvency administrators legal standing in Russia (subject to exequatur).

   Best Practice that India can adopt:
   India is already trying to follow UNCITRAL standards through Draft "Part Z" which needs to be enforced as soon as possible. However, it can further take from Russia's emphasis on **asset tracing across borders** (Article 131 of Russian Law) which states that the debtor's estate includes all assets—even those abroad, to make its framework more robust. This will help creditors to obtain the money stuck abroad. Also corporate debtors would not be able to escape liabilities by placing their assets abroad.

2. **Jurisdiction Criteria:**

India (Draft "Part Z", Clauses 14, 24, 25, 26):

India uses the **"COMI"** test to decide the jurisdiction. It assumes the debtor's "COMI" is the country where the debtor's registered office is located(Clause 14 of Draft), but this can be challenged. Indian tribunals must coordinate with foreign courts where parallel cases exist as per Clause 25 of the Draft.

Russia (SC Ruling of Feb 2024):

Russian courts also use "COMI"-like reasoning. The SC of Russia in the above ruling listed certain factors that justify a country's jurisdiction over a foreign company's bankruptcy such as the presence of assets, business operations, management, customers, creditors, and ownership links in Russia. If a foreign company has strong ties to Russia, even if not registered there, Russian courts may assume jurisdiction.

Best Practice that India can adopt:

India's Draft Z could strengthen its "COMI" test by listing more practical factors like in Russia (customer base, business activity, ownership). This would help tribunals decide more easily in real-life cases.

3. **Recognition of F.Ps:**

India (Draft "Part Z"):

A foreign proceeding can be recognized as either a **main** or **non-main** proceeding. Recognition leads to relief like a **moratorium** (pause on lawsuits and asset transfers) as stated under Clause 18. Recognition is refused if it goes against Indian **public policy** as stated under Clause 15.

Russia (Article 1 of Bankruptcy Law , 2002):

Russia also recognizes foreign court decisions if there's a **treaty** or based on **reciprocity**.

In cases where no treaty exists foreign rulings may still be recognized in Russia based on the principle of Reciprocity.

Best Practice that India can adopt:

India's model is modern and in line with UNCITRAL "Model Law". But Russia's use of **reciprocity** is practical and should be adopted within Draft "Part Z" in India too, especially since India lacks treaties in many cases.

4. **Handling Multiple Proceedings**

India (Draft "Part Z", Clause 24):

Once a foreign case is already accepted as the main one by the Indian court, A new case can be started under Indian rules only if the company in question owns some things (assets) here in India. Also, whatever actions or legal steps happen in this new Indian case must only apply to the company's properties or stuff that is physically in India and if needed, any other properties that, according to Indian rules, should be handled in this case.

Russia (Draft Law):

Russia's **draft law** gives very clear situations where a non-main proceeding can start in Russia, including: if the **foreign country refuses to recognize Russian rights**, if the **foreign case excludes Russian assets**, if **Russia needs to enforce** something the foreign country failed to do, or if there is **no cooperation** from the main jurisdiction

Best Practice that India can adopt:

India is aligned well here, but Russia's **clear conditions** on when to start a non-main proceeding (like if the main country refuses to cooperate) can help Indian courts decide more confidently. There should be a mention as to what should happen, when the **main country refuses to cooperate**, the **foreign proceeding is partial**, or the **foreign law excludes Indian creditors**.

5. Current Status and Draft Laws

India:

Draft "Part Z" is still a **proposal** and not in force. Sections 234 and 235 of the Insolvency and Bankruptcy Code, 2016 remain largely unimplemented.

Russia:

Existing laws are used flexibly. A **draft law** has been made and is being reviewed, but courts already apply some of its concepts (e.g., COMI, public policy, asset-based jurisdiction).

Best Practice that India can adopt:

India can adopt Russia's **pragmatic use of court rulings** to fill legal gaps while the law is pending. Also, focus on **training judges and professionals** as Russia is doing.

Comparison with that of South Africa:

The comparison can be done based on the following points:

1. **Application:**

India (Draft "Part Z", Clause 1 (2) & IBC Section 234, 235): At the moment, India lacks a comprehensive legislation pertaining to the framework for CBI. Though they are rarely utilized in reality, Section 234 permits the Central Government to write letters of request for cooperation and engage into bilateral agreements. By defining more precise terms of application, such as stating that these rules will apply to all companies governed by this Code in situations like: when a foreign authority or its representative requests assistance in India; when Indian authorities seek assistance abroad regarding domestic insolvency matters; when both Indian and international proceedings are ongoing for the same entity; or when foreign stakeholders seek to initiate or engage in proceedings, Draft "Part Z", Clause 1 (2), based on the MLCBI, attempts to address this.

South Africa (Section 2 of CBI Act, 2000): Even in the absence of a formal agreement with the other nation, South Africa's CBI Act, 2000, is applicable. According to the section, this Act is applicable in the following situations: (a) a foreign court or foreign representative requests assistance in the Republic in connection with a foreign proceeding; (b) a foreign State requests assistance in connection with a proceeding under the Republic's laws relating to insolvency; (c) there is a foreign proceeding and a proceeding under the Republic's laws relating to insolvency concerning the same debtor; or (d) creditors or other interested parties in a foreign State have an interest in requesting the start of, or taking part in, a proceeding under the Republic's laws.

Best Practice that India can adopt:

India at present needs to immediately enact the Draft "Part Z", but till then within Section 234, it can adopt South Africa's direct method of applying the law **without needing a treaty, but based on mutual cooperation between Courts.** Otherwise as far as the

Draft Part is concerned**,** South Africa's law applies in **more or less the same situations**, but it is **active immediately**, but which the Draft Part isn't.

2. **Moratorium after recognition:**

India (Clause 17 – "Part Z"):

Under Clause 17 of the Draft Part, after recognition of the "foreign main proceeding" the "Adjudicating authority" needs to pass an order in order to declare a moratorium.

South Africa (Section 17 , CBI Act, 2000):

Under the above section there is no mention of a court order which says that the legal effect takes immediate effect after recognition. Hence it is automatic.

Best Practice that India can adopt:

India's Draft Z can simplify the process by saying that the **moratorium is automatic upon recognition**, just like in South Africa. This will make the law **faster, clearer, and more effective** as there will be no delay in waiting for a new order.

3. **Temporary Relief during Recognition Process:**

India (Draft "Part Z"):

India's Draft "Part Z" contains no such provision.

South Africa (Section 19 of CBI Act, 2000):

Section 19 of the above Act provides for provisional or temporary relief during Recognition process if urgent as deemed by the Court.

Best Practice that India can adopt:

India's Draft "Part Z" can incorporate this provision of providing temporary relief.

Comparison with that of China:

The comparison between the Insolvency Practices of Russia and India can be done based on the following points:

1. **Definition and Approach to CBI:**

   India ("Part Z" Clause 1): This section aims to integrate principles from the "Model Law" to effectively manage CBI matters, with the following intentions:

   - Establishing collaboration between Indian insolvency authorities and international judicial bodies, insolvency professionals, and related stakeholders.
   - Ensuring legal clarity to encourage global commerce and investment.
   - Promoting fair and streamlined resolution processes that consider all involved parties, including the distressed business.
   - Supporting business turnarounds to maintain investor confidence and safeguard jobs.

China (Article 5 of EBL): Article 5 of China's EBL clarifies the country's stance on international insolvency cases. It states that once bankruptcy proceedings are legally started in China, they are considered to apply not just within its borders, but also to any assets the debtor may own abroad. On the other hand, a foreign bankruptcy ruling affecting assets within the country can be enforced only if the Chinese court confirms it meets certain conditions. These include compliance with international treaties or reciprocity, and assurance that the ruling doesn't violate China's legal principles, public interest, sovereignty, or the rights of domestic parties.

Comparison:

India provides a broader and has a more wider scope based on the "Model Law". China's Article 5 is shorter and conditional. **India is in a better position here.**

2. **Recognition of foreign proceedings:**

India (Draft "Part Z", Clauses 12 - 15):

India's procedure of recognition of foreign proceedings is far more detailed than that of China's. According to Clause 15, NCLT will recognize a foreign proceeding if certain conditions like: it is FP, the applicant is the FR and all the documents are correct.

China (Article 5 of EBL[226]):

China allows foreign insolvency judgments to be recognized, **only if**:

- There is a treaty or reciprocity,
- The judgment doesn't go against public policy, sovereignty, or creditor rights. Recognition is not guaranteed.

Comparison:

India has a **fixed and clear recognition process better than China**.

3. **Moratorium and Relief:**

India (Draft "Part Z" - Clause 17 & 18):

Clauses 17 and 18 of the draft allow the tribunal to impose a moratorium and grant additional relief after recognizing a foreign proceeding. These include halting ongoing legal actions, freezing asset transfers, stopping foreclosures, protecting leased property, assigning asset management in India to the foreign representative, and offering any relief available under Indian insolvency law.

[226]Enterprise Bankruptcy Law of the People's Republic of China, *supra* note 139.

China (Article 5 and interpretation):

Article 5 of China's EBL clarifies the country's stance on international insolvency cases. It states that once bankruptcy proceedings are legally started in China, they are considered to apply not just within its borders, but also to any assets the debtor may own abroad. In China, a foreign bankruptcy judgment affecting assets located in China can be enforced, but only if the ruling to ensure it aligns with international treaties China is part of, or that a mutual recognition (reciprocity) relationship exists between the countries. The decision must also not conflict with China's core legal values, harm national sovereignty or public interest, or infringe upon the legal rights of debtors in China. Only when these requirements are satisfied will enforcement be granted.

Comparison:

India has **detailed powers** to give relief. China's system is more **limited**. Hence **India is stronger here**.

4. **Application to Foreign Assets**

India (Section 234 & 235 of IBC, 2016):

In order to enforce the provisions of this Code, the Central Government may sign an agreement with the government of any nation outside of India. The Central Government may, by publishing a notice in the Official Gazette, mandate that the application of this Code's provisions to the assets or property of a corporate debtor or debtor, including a corporate debtor's personal guarantor, as the case may be, located anywhere in a foreign nation with which reciprocal agreements have been made, be subject to certain requirements. In accordance with Section 235 of the Code, regardless of what is stated in this Code or any currently enacted laws, if during the course of an insolvency resolution process, liquidation, or bankruptcy proceedings, as the case may be, the resolution professional, liquidator, or bankruptcy trustee, as the case may be, believes that assets of the corporate debtor or debtor, including a personal guarantor of a corporate debtor, are

located in a nation outside of India with which reciprocal arrangements have been made under section 234; he may apply to the Adjudicating Authority requesting that evidence or action pertaining to such assets is needed in connection with the process or proceeding. The Adjudicating Authority may send a letter of request to a court or authority of that nation that is qualified to handle such a request after receiving an application under sub- section (1) after being convinced that proof or action pertaining to assets under sub- section (1) is necessary in connection with the insolvency resolution process, liquidation, or bankruptcy proceeding. Also the Draft "Part Z" doesn't contain any provision stating that the law would also apply to foreign assets.

China (Article 5, EBL):

China clearly says that **Chinese proceedings cover foreign assets** of the debtor. But for recognizing foreign judgments, the Chinese court checks for a treaty or reciprocity, and also whether enforcing it will go against **China's sovereignty, public policy, or creditor rights**.

Comparison:

China has **direct statutory provision** applying Chinese law to foreign assets. India depends on government-to-government **agreements**, which so far have not been signed. **India should adopt China's approach** and clearly write in law that Indian proceedings can apply to a debtor's assets abroad. This would save time and confusion.

5. Foreign Creditors' Rights

India (Draft "Part Z" - Clause 10 & 11):

Foreign creditors are treated **same as Indian creditors**, except for claims like foreign taxes. They must also receive notices.

China:

In China's legal system no direct clause talks about equal rights to foreign creditors. Decisions depend on courts and sometimes local interest is prioritized.

Comparison:

Hence India is more **inclusive and transparent**. **India is better here.**

6. **Dealing with Parallel Proceedings**

India (Draft "Part Z" - Clause 24 to 28):

Rules under Clauses 24 to 28 of Draft "Part Z" are given on how Indian and foreign cases can go together. The tribunal must adjust relief, review actions and ensure fairness.

China:

In China's legal system no specific provisions are there for parallel cases. Courts rely on discretion and may avoid foreign cooperation if it harms local interests.

Comparison:

India here provides **better clarity and guidance**. **India is better here.**

7. **Implementation:**

India:

Though the law is well-drafted in the Draft "Part Z", it is **not yet implemented**. Also, **Sections 234 and 235** are weak since **no reciprocal agreements** have been signed.

China:

China has **practically used** Article 5 in several real cases (Italy, U.S., Hong Kong). Courts are **slow but improving gradually** .

Best Practice that India can adopt:

India should follow China's lead and actually start using the law in practice. India should also **sign treaties or declare reciprocity** with key countries to make the law useful.

Comparison with that of Brazil:

1. **Overall Legal Framework for CBI :**

India

India's cross-border law depends on reciprocal agreements with other countries as mentioned u/s 234 and 235 of IBC, 2016 discussed before. Draft "Part Z" adds new rules guided by the **MLCBI**, but these rules are yet to be enacted.

Brazil (Art. 167-A to 167-N):

Brazil's law now has **detailed provisions** for CBI. It officially adopted the "**UNCITRAL MLCBI in 2005'**, which resulted in creating a system that helps courts and professionals from different countries cooperate.

Best Practice that India can adopt:

Brazil is better in the overall aspect as it has already implemented the provisions of the "UNCITRAL "Model Law" on CBI within its domestic legal framework. India too should **implement Draft "Part Z"** just like Brazil. It should also stop depending only on treaties under Sections 234 and 235.

2. **Recognition**

India ("Part Z" - Clauses 12-15):

At present although the Draft Part is not in force and there is no formal provision for the recognition of foreign proceedings, yet taking the Draft "Part Z" into consideration, clauses 12 to 15 of the Draft Part state that foreign representatives can ask NCLT to recognize a foreign proceeding. If the case fits the definition of foreign proceeding and the documents are valid, NCLT must recognize it as a **main** or **non-main** proceeding.

Brazil (Art. 167-H & 167-J of Bankruptcy Legislation of 2005):

Foreign representatives can also apply for recognition under Art. 167 – H. The Brazilian court also check the same things: is it a foreign proceeding, is the person seeking recognition a proper representative, and are the documents complete.

Comparison:

Both countries follow the **same model (UNCITRAL)** and have similar processes. **India and Brazil are equal here**. However India needs to enact the Draft "Part Z" as soon as possible.

3. **Public Policy Exception**

India (Draft "Part Z" - Clause 4):

Indian courts can refuse recognition if it goes against the **public policy** of India. Government can also interfere to stop something that harms the national interest.

Brazil (Art. 167-A):

Brazil also has a **public interest exception**. If applying the rule will harm public interest, courts can refuse to follow it.

Comparison:

Both countries have this safeguard. **They stand on equal footing.**

4. **Definition of Key Terms (Like "COMI")**

India (Draft "Part Z" - Clause 14):

By default, a company's main operations are presumed to be in the country where its RO is located—unless the office was moved to another country within three months before starting insolvency proceedings there.To decide the actual central hub of operations, the tribunal should examine where the company is truly managed and whether this is evident to outside observers like creditors. If the central location is unclear, the tribunal may consider other factors that the government prescribes to make a fair judgment.

Brazil (Art. 167-I):

Brazil also assumes the "COMI" of a company where the company is registered, unless proven otherwise.

Comparison:

Brazil and India are on the same footing.

5. **Relief Available After Recognition**

India (Draft "Part Z" - Clauses 17 & 18):

If a foreign proceeding is recognized, according to clause 17 NCLT can issue a moratorium to stop lawsuits, freeze assets, hand over control to foreign representatives, and allow them to manage Indian assets.

Brazil (Art. 167-M & 167-N):

Brazil gives the same powers. But Courts there can also give **temporary relief** even before recognizing a case. After recognition, relief includes stopping actions, protecting assets, managing business, and more. Brazil's list is **more wide**, so courts have more flexibility

Best Practice that India can adopt:

Brazil is better here. India should allow courts to give **temporary relief** before recognition to make reliefs **broader** like Brazil.

6. **Practical Status of Law**

India:

Only Sections 234 and 235 are in force, but no country has signed reciprocal agreements. Draft "Part Z" is **not implemented yet**.

Brazil:

Brazil **adopted and implemented** the "UNCITRAL "Model Law". The rules are in force and being used. Also JIN guidelines ensure provisions that are far ahead of India.

Best Practice that India can adopt:

Brazil is far ahead in practice. India must **immediately enforce Draft "Part Z"**. Based on international norms, India's proposed law on CBI already permits Indian experts and judges to collaborate directly with foreign courts. However, India's proposal omits a few crucial features when compared to the JIN Guidelines, which nations like Brazil have embraced. According to the JIN Guidelines, unless it is private for legal reasons, the parties involved (such as the company or creditors) should be informed beforehand, permitted to observe the conversation, and the discussions should be recorded and made public when courts from different nations speak with one another during a case. These items aren't stated explicitly in India's draft; it permits court-to-court discussions but leaves out guidelines for informing others, allowing them to watch, or recording the sessions. India should include these criteria in its legislation to increase the process's transparency, equity, and credibility with foreign businesses and investors. By doing this, India's system would become more open and simpler to use in cross-border situations.

Chapter 4: Judicial Trends and Implications

Jet Airways (India) Limited vs State Bank Of India &Anr on 26 September, 2019[227]:

In this case, "Jet Airways", which is one of the big airlines in India, was facing financial trouble and could not pay its debts. So, the company entered a process in India where a special person, called "Resolution Professional", takes control of the company and tries to find a way to pay the creditors or sell the business. At the same time, a court in Netherlands also started a similar process because Jet Airways had some money and properties in that country too. A person was chosen there also, to take care of the company's matters in Netherlands.

Now the issue came up because there were two different people in charge of the company in two different countries. The Dutch person, who was made the caretaker by the court in Netherlands, wanted to be part of the Indian process and help in solving the company's problems together. But there was confusion because Indian law does not clearly say how to work with people from other countries in such cases. The Indian professional went to the tribunal in India and asked if both sides can cooperate and work together.

The tribunal in India, known as NCLAT, listened to this and said yes. It allowed both the Indian and Dutch people handling Jet Airways' problems to coordinate and work in harmony. They were told to follow a written understanding between both of them, which is known as a Cross Border Protocol. This way, both countries' representatives could share information and make the process better. The Dutch person was allowed to attend meetings in India, where the main creditors discuss and vote on big decisions, but he could not vote himself.

The Indian tribunal said even though the Indian law does not have clear rules for such international cases, it is still possible to follow good practices from around the world. They mentioned UNCITRAL "Model Law", which is followed by many countries to handle these

[227] Jet Airways (India) Limited vs State Bank Of India & Anr, (NATIONAL COMPANY LAW APPELLATE TRIBUNAL NEW DELHI 2019).

global cases, and even if India has not officially followed it, the idea of it can still help in situations like this.

This case also showed some big problems Indian courts face when dealing with companies that are in trouble in more than one country.

- The biggest problem is that India doesn't yet have proper laws to manage such international cases. So judges and professionals have to use their own understanding, which sometimes creates confusion.
- Also, when more than one court from different countries takes charge of the same company, it becomes difficult to decide who has the final say.
- Another issue is that Indian law under IBC doesn't clearly say whether decisions from foreign courts can be accepted or not.
- There are also very few past cases like this, so courts don't have many examples to learn from.

All these things make it harder for Indian authorities to smoothly handle cases where companies have assets or businesses in other countries.

State Bank Of India vs. Videocon Industries Ltd &Ors on 4 July, 2019[228]:

This case is about a group of companies in the Videocon business that was in deep money trouble. Many cases were filed about their debt, and the biggest bank involved, State Bank of India, was waiting for a decision. The people managing the case, including a person called Resolution Professional, already finished all the talking and giving papers to the court on 25th January 2019. They were just waiting for the court to give its final decision. But months passed, and the court still didn't say anything. Because of this, nothing could move forward, and all 15 companies in the group were stuck with no answers.

The main problem was that the court, which is supposed to help solve such company cases (called NCLT in Mumbai), didn't give the judgment on time. So, the people went to a higher

[228] State Bank Of India vs Videocon Industries Ltd, (National Company Law Appellate Tribunal 2019).

court, the Appellate Tribunal (NCLAT), and told them that this delay is stopping everything. Without the court's order, nobody knows what to do with the companies.

The higher court listened and said it is not good to wait so long, especially when all arguments were already finished. They told the lower court to give its final judgment quickly, within three weeks if possible. They also said if it doesn't happen, then the aggrieved can come back and file petition again.

This whole situation also showed some big problems India has when it comes to companies that have business or assets in other countries.

- First, Indian law doesn't have proper rules to deal with companies that are in more than one country.
- Second, there is no clear system for how courts in India and courts in other countries should talk to each other or work together.
- Also, when there are many companies in one group, meaning a case of group insolvency, then it becomes difficult to solve their money problems together. So, all this makes it very hard for Indian courts to handle cases that go beyond Indian borders.

Macquarie Bank Limited vs. Shilpi Cable Technologies Ltd on 15 December, 2017[229]:

This case is between Macquarie Bank, which is an Australian company, and Shilpi Cable Technologies, an Indian company. Macquarie gave some goods and services to Shilpi, but Shilpi did not pay the bill. So Macquarie sent them a legal notice to pay, and when Shilpi still didn't pay, Macquarie went to the Indian court to start the insolvency process under the IBC law.

But Shilpi said that the case should not be accepted. They said the notice sent by Macquarie was not valid because the person who sent it was not an "authorized" person. They also said that foreign companies like Macquarie can't file such cases under Indian law.

[229] Macquarie Bank Limited vs Shilpi Cable Technologies Ltd, (Supreme Court of India 2017).

The first big issue was whether a foreign company like Macquarie Bank has the right to start a case in India when they are not paid.

The second issue was about the legal notice. Indian law says that a demand notice should be sent by someone who is officially allowed. The question was: is this rule very strict and must always be followed, or can it be relaxed if the case is genuine.

The SC gave a clear decision. It said that foreign companies "**do have the right"** to file for insolvency in India under the IBC. So Macquarie Bank, even though it is from Australia, was allowed to go to the Indian court.

Then the court also looked at the second issue. It said that the rule about the notice being sent by an "authorized person" is **not a strict rule**. It is just a way to make sure everything is done in order. But if that small detail is missing, it should not stop a real case from going forward. What matters most is whether the money is really owed and whether the creditor has a proper claim.

This case also shows some difficulties that Indian courts face when the companies are from different countries.

- There is no strong law in India yet that explains how to deal with CBI. Because of this, it becomes hard when one side is from another country. Courts don't have a proper system to talk or work together with foreign courts. There are no official rules or international agreements to follow. Also, confusion can happen even over small technical things, like who should send a legal notice.
- So, Indian courts have to make decisions case by case, without a proper law to guide them. This makes the process slow and unclear. Until India brings a special law for cross- border insolvency, these kinds of problems will keep happening.

V. R. Hemantraj vs Stanbic Bank Ghana Ltd on 29 August, 2018[230]

This case was about a bank from Ghana, Stanbic Bank, who gave loan to a company in Ghana called Rajkumar Impex Ghana Ltd. But this Ghana company had a parent company in India

[230] V. R. Hemantraj vs Stanbic Bank Ghana Ltd, (NATIONAL COMPANY LAW APPELLAT TRIBUNAL, NEW DELHI 2018).

called Rajkumar ImpexPvt Ltd. The Indian company promised the bank that if Ghana company cannot repay, it will pay. But later, the money was not paid back. So the Ghana bank went to court in UK and got a judgment that said the Indian company has to pay. Then, the bank filed a case in India under insolvency law, saying the Indian company should be declared insolvent.

A man named Hemantraj, who is a shareholder in the Indian company, did not agree. He said the Ghana bank was not a real financial creditor under Indian law. He also said the UK court decision is not good enough to prove that the Indian company owes money. He said the Indian tribunal didn't check properly if the money is really due before accepting the bank's case.

But the Indian Appellate Tribunal (NCLAT) did not agree with Hemantraj. They said that because the Indian company gave a written promise (guarantee) for the loan, the Ghana bank is a financial creditor. Also, even if the UK court decision was ex-parte (only one side present), it still shows that money is due. And the Indian tribunal had already said that there was enough proof to show that debt and default happened.

So, the court dismissed the appeal by Hemantraj and allowed the insolvency case to continue.

Thus :

- In India, when a company has business and problems in more than one country, the courts find it hard to manage the situation. Right now, there are no strong rules made only for dealing with such global company troubles. Because of this, it becomes very confusing when one part of the company is in India and the other part is outside.
- Indian judges also don't have an easy way to talk to judges from other countries. So when two courts in two different countries are handling the same case, they cannot really help each other or work together well. This causes delay and mistakes.
- Also, there is no clear way to accept court decisions from other countries. Even if a foreign court already gave a judgment, Indian courts don't always know how to use that here. That makes the case more difficult and sometimes unfair.
- Lastly, if there are two cases running in two countries for the same company, nobody knows which one should come first or who should decide. It becomes a mess. Until India

makes a law for this kind of global company case, the courts will have a hard time every time such a case comes.

Bank Of Baroda vs Kotak Mahindra Bank Ltd. on 17 March, 2020[231]

Bank of Baroda had a deal with Vysya Bank where money was involved between them and a UK company. The UK company got the payment from Bank of Baroda's London branch, but Vysya Bank never returned that money. So Bank of Baroda went to a court in London and got a court order in 1995 saying Vysya Bank had to pay back the money.

Years went by, and the banks talked, maybe to solve the matter quietly. But that didn't work. In 2009, Bank of Baroda went to an Indian court in Bangalore and asked for help to recover the money based on the England court's decision. They tried to make the foreign order work in India. But Kotak Mahindra Bank, who had taken over Vysya Bank, said no — the case was too late.

The big problem for the Indian court was to decide how long Bank of Baroda had to file this request. Should Indian law apply? Or UK law? The judges said that Indian law doesn't clearly say how much time someone has to ask the court to follow a foreign order. So they checked the Limitation Act and said, because the order was foreign, not Indian, only 3 years are allowed, not 12 years like for Indian court orders.

The court also explained that the time starts ticking from when the UK court made its order — unless someone had tried to collect money in the UK too, in which case the clock might start later. In this case, no such thing happened. So 14 years was way too late. The court dismissed Bank of Baroda's request.

- This kind of case although not directly linked to CBI yet it shows how tricky it can be when something starts in another country and ends up in Indian courts.
- India doesn't yet have strong laws for cross-border company failures or foreign debt situations.

[231] Bank Of Baroda vs Kotak Mahindra Bank Ltd., (Supreme Court of India 2020).

- Sometimes, courts get confused about whose rules apply, or if Indian courts can even do anything.
- Also, if a country is not listed as "reciprocating," their court orders might not count at all in India. Because of all this, people trying to get back money from across borders often end up stuck or losing time.
- Indian courts often struggle to apply or recognize foreign insolvency outcomes.
- Recognizing and enforcing still depends on diplomatic "reciprocating territory" lists.
- Lack of unified law in cross border insolvency.

Insights from the above cases for the potential adoption of the UNCITRAL Model Law:

1. ***The Jet Airways case*** [232] was India's first experience with CBI coordination which shows that there is an **urgent need for a formal structure** for coordination between foreign and Indian courts. The "Model Law" provides such a framework, with clear rules for recognizing FPs and appointing foreign representatives**.**
2. The ***Videocon Industries case*** [233] shows the challenge of group insolvency and procedural delays when multiple companies across borders are involved. In this particular case, NCLT's delay in delivering judgment affected all 15 companies under the group umbrella. UNCITRAL's "Model Law" supports handling corporate groups in insolvency more efficiently.
3. The case of ***Macquarie Bank Ltd.***[234] confirmed that foreign creditors have the right to initiate insolvency in India. The "Model Law"**gives equal standing to foreign creditors** and details how they can participate in domestic insolvency proceedings.
4. The ***V.R. Hemantraj case*** [235]case involved a foreign decree from a UK court against an Indian company for guaranteeing a loan given in Ghana. The Indian appellate court allowed the insolvency proceedings to continue but faced questions around foreign judgment enforcementanddebt recognition. A structured "Model Law" adoption would clarify how to treat foreign insolvency-related judgments and enforce them within India.

[232] Jet Airways (India) Limited vs State Bank Of India & Anr, *supra* note 227.
[233] State Bank Of India vs Videocon Industries Ltd, *supra* note 228.
[234] Macquarie Bank Limited vs Shilpi Cable Technologies Ltd, *supra* note 229.
[235] V. R. Hemantraj vs Stanbic Bank Ghana Ltd, *supra* note 230.

5. The ***Bank of Baroda case*** [236]though not a typical CBI case, but it highlights the problems in executing foreign judgments in India due to conflicting rules about limitation periods and lack of reciprocity. "Model Law" Model offers **uniform recognition rules**.

   Draft "Part Z" under IBC still is left to be enforced. These case laws and their insights provide reasons for which the Draft Part need to be adopted soonest.

[236] Bank Of Baroda vs Kotak Mahindra Bank Ltd., *supra* note 231.

Chapter 5: Suggestions

From the above CHAPTERS, the following suggestions can be recommended:

1. India is already working on a law for CBI based on international rules, but the progress is quite slow. The government has come up with something called **Draft "Part Z"**, which is supposed to help, but it hasn't been made official yet. If India wants to become better at dealing with global bankruptcy cases, it needs to pass this law as soon as possible. But passing the law is not enough. There are still many things that need to be added or fixed.
2. India's Draft Z could strengthen its "COMI" test by listing more practical factors like in Russia (customer base, business activity, ownership). This would help tribunals decide more easily in real-life cases.
3. India is already trying to follow UNCITRAL standards through Draft "Part Z" which needs to be enforced as soon as possible. However, it can further take from Russia's emphasis on **asset tracing across borders** (Article 131 of Russian Law) which states that the debtor's estate includes all assets—even those abroad, to make its framework more robust. This will help creditors to obtain the money stuck abroad. Also corporate debtors would not be able to escape liabilities by placing their assets abroad.
4. India's model is modern and in line with "UNCITRAL Model Law". But the Draft "Part Z" needs to address the situation that can occur when a foreign insolvency judgement needs to be recognized from a territory that does not fall within the category mentioned under Clauses 1(4) and 1(5) of the Draft.
5. Also Russia's **clear conditions** on when to start a non-main proceeding (like if the main country refuses to cooperate) can help Indian courts decide more confidently. There should be a mention as to what should happen, when the **main country refuses to cooperate**, the **foreign proceeding is partial**, or the **foreign law excludes Indian creditors.**
6. India at present needs to immediately enact the Draft "Part Z", but till then within Section 234, it can adopt South Africa's direct method of applying the law based on court discretion regarding the importance and gravity of the interests of the stakeholders(both foreign and domestic) involved, **without needing a treaty.**

7. Another helpful idea is to make sure that once a foreign case is accepted in India, the court automatically blocks any legal actions against the company's assets (this is called a moratorium). In South Africa, this happens right away. In India, one has to wait for a judge to pass another order under Clause 18 of the Draft "Part Z". That delay can sometimes cause problems.
8. From Brazil, India can take the idea of **temporary relief**. That means if a company is clearly in trouble and a foreign court has already given a decision, India should still allow temporary protection to stop any urgent harm, even before officially accepting the foreign case.
9. India's proposed law on CBI already permits Indian experts and judges to collaborate directly with foreign courts. However, it omits a few crucial features when compared to the JIN Guidelines, which nations like Brazil have embraced. According to the JIN Guidelines, unless it is private for legal reasons, the parties involved (such as the company or creditors) should be informed beforehand, permitted to observe the conversation, and the discussions should be recorded and made public when courts from different nations speak with one another during a case. These items aren't stated explicitly in India's draft; it permits court-to-court discussions but leaves out guidelines for informing others, allowing them to watch, or recording the sessions. India should include these criteria in its legislation to increase the process's transparency, equity, and credibility with foreign businesses and investors. By doing this, India's system would become more open and simpler to use in cross-border situations.
10. China has **direct statutory provision** applying Chinese law to foreign assets. India depends on government-to-government **agreements as mentioned under Section 234 of IBC**, which so far have not been signed. **India should adopt China's approach** and clearly write in law that Indian proceedings can apply to a debtor's assets abroad. This would save time and confusion.
11. Under Section 3 of FEMA, a clause can be inserted which exempts transactions involved in recognized CBI proceedings from obtaining prior RBI approval before dealing with overseas currencies.
12. **"Regulation 4" of the FEMA (Acquisition and Transfer of Immovable Property in India) Regulations, 2018** allows foreign companies to own property in India only if they

have an established business presence. This restriction complicates matters when a foreign company that owns property in India becomes insolvent, as it can delay asset liquidation and creditor repayments. This clause can also be amended to relax the conditionality for foreign companies to have an established business presence, such as a branch or project office. This is so because when a foreign company goes bankrupt and owns property in India, the current rule requires it to have a "business presence" to own property legally. But if it doesn't, the title of the property itself might be disputed, delaying liquidation and payout to creditors. By removing this requirement, the insolvency process can move faster without getting stuck in compliance or ownership validation issues. The same law makes it even more complex for companies from restricted countries like Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong, Macau, or North Korea, as they must get prior RBI approval before transferring any property. This restriction can also be done away with to allow universal access.

13. **Section 14 of IBC 2016** is a crucial provision that protects companies undergoing insolvency by imposing a moratorium. This moratorium essentially freezes all legal actions, prevents asset transfers, and stops enforcement proceedings against the corporate debtor once insolvency proceedings begin. While this safeguard is highly effective within India, it becomes a major obstacle when dealing with "cross-border insolvencies", as its reach is strictly limited to Indian jurisdiction. One of the biggest challenges is that the moratorium applies only in India, meaning courts and authorities in other countries are not legally bound to follow it. As a result, foreign creditors can continue suing the insolvent company, enforce judgments, or seize its assets abroad, even though such actions would not be allowed in India. This lack of global enforcement weakens the entire purpose of the moratorium, as the corporate debtor remains vulnerable to foreign legal claims. Hence this particular section can be amended to have global enforcement. Even though by the application of the Rule of "Generalia Specialibus Non Derogant" the courts can do away with this confusion yet insertion of such a provision can clarify issues more.
14. Another concern arises with Section 44A CPC, which permits the direct execution of foreign judgments only from "reciprocating territories". For "non-reciprocating

jurisdictions" like the USA or China, this means, a fresh lawsuit is required in India before such judgments can be enforced. "Part Z" attempts to address this through Clause 1(4), which limits recognition to countries that have adopted the "UNCITRAL Model Law", and Clause 1(5), which allows the Central Government to establish bilateral agreements for enforcement. Nevertheless, it remains unclear whether judgments from non-reciprocating territories will still necessitate independent legal proceedings in India. Additionally, there is no direct indication of whether "Part Z" overrides or merely coexists with Section 44A CPC, further complicating the process for foreign creditors. Therefore this issue of whether or not non – reciprocating territories need to institute a fresh law suit in India must be clearly addressed within the Draft Framework. Additionally, there should be a direct indication of whether "Part Z" overrides or merely coexists with Section 44A of CPC,

15. Finally, many Indian companies have operations or property in other countries. But the Indian law doesn't explain what should happen to those things when bankruptcy starts. A company might have a branch or a separate legal entity abroad, and courts in India can't touch those unless the foreign country agrees. So even if an Indian creditor wants to claim those assets, they might not be able to. This issue also needs to be addressed within the Draft Part of IBC.
16. India can also benefit by expanding the "Part Z" to include principles of **group coordination** provisions in cases of group insolvencies , as suggested in UNCITRAL's "Model Law".
17. To fix all this, India must not only pass Draft "Part Z" for the time being but also fix FEMA rules, clarify which law overrides which, and make it less difficult for adjudicatory bodies to function with other countries.

Chapter 6: Conclusion

Therefore from the above discussions it is clear that India's CBI framework can be strengthened by addressing structural and legal challenges, adopting best practices from BRICS nations, and analyzing judicial insights that facilitate the potential enactment of the "Model Law". The given suggestion detail the ways in which India can adopt best practices from the BRICS nations , coupled with amendments in the existing laws and taking insights from the various judicial decisions that advocate for the potential enaction of the "Model Law". The suggestions such as extending reciprocity within the Draft "Part Z" other than under Section 234, or incorporating provisions related to interim relief for urgent actions needed in CBI matters or adopting the provisions from JIN guidelines such as information to the parties involved (such as the company or creditors) beforehand, permitting them to observe the conversation, and recording the discussions and making them public, when courts from different nations speak with one another during a case, should be adopted for strengthening the current framework under the Draft "Part Z". At present although the provisions of reciprocity are enumerated under Section 234 of the Code, yet what they emphasize on is the necessity of bilateral agreements. In reality negotiating bilateral agreements with each and every single country is a robust process. So the requirement of bilateral agreements can be done away with and replaced with multilateral agreements in which India can enter into an agreement with multiple countries for enacting the provisions of this Code. One important point to be noted is that Point No. 6 of suggestion is actually Draft Part Z but which till now is not enforced, hence it can be stated additionally that even if the whole of the Draft cannot be enforced, at least the application part under the Draft can be incorporated under Section 234 in which the provisions can be enforced without needing a treaty of bilateral reciprocity but incorporating the principle of comity between courts as stated under Clause 1(2) of the Draft "Part Z". We see here that although the Draft doesn't speak of reciprocity in a stricter sense yet it talks of comity between courts. Reciprocity under the Draft strictly depends on Clause 1(4) and 1(5). Another additional point which needs notice under Point 3 of the suggestion is that although Russia's asset tracing across borders can be enforced to state that the debtor's assets will include all assets whether situated within the country or abroad, yet enforcing such a provision can be tough as the foreign country's jurisdiction might not recognize such an action. This to some extent although is addressed under clause 1(5) of the Draft which states that

asset tracing across borders can happen only if Central govt. enters into an agreement with that country under clause 1(5) of the Draft, yet the restriction as the requirement of an agreement between the governments of the countries persists without which which assets of the Debtor cannot be traced across borders. Also under Point No. 15 of the suggestions, a company might have a branch or property abroad and Indian courts can't touch those properties unless the foreign country agrees. This agreement is also subject to an agreement under Clause 1(5) of the Draft Part Z which States that only if the Central government makes an agreement with another foreign country for applying this Code, only then shall the laws under this code apply to the debtor's properties situated abroad. So until and unless such an agreement is made an Indian creditor cannot claim the foreign assets of the debtor. Here also we see that the interests of the domestic creditors in the foreign assets of the domestic company depends on an agreement under Clause 1(5) of the Draft. So to sum up, we can say that although therea are a no. of restrictions undfer the Draft itself which needs further attention yet, at present and for the time being, India needs not to enact Draft "Part Z" alongside introducing some changes into its existing legal framework for building an overall effective corporate CBI Regime.

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